

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

THURSDAY, NOVEMBER 18, 2010

VOLUME 2

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE MEETING**

8:30 a.m.

Thursday, November 18, 2010

Yates Auditorium

Department of the Interior

Washington, DC

COMMITTEE MEMBERS PRESENT:

Ms. Rosita Worl, Chair

Ms. Sonya Atalay

Mr. Alan Goodman

Mr. Eric Hemenway

Mr. Adrian John

Mr. Dan Monroe

Mr. Mervin Wright, Jr., Acting Chair

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1 **WELCOME AND CALL TO ORDER**

2 ROSITA WORL: Let's call the Review Committee
3 meeting to order.

4 DAVID TARLER: Okay.

5 ROSITA WORL: And if – Eric, would you mind
6 doing the traditional welcome?

7 ERIC HEMENWAY: Sure.

8 **TRADITIONAL WELCOME**

9 ERIC HEMENWAY: (Native American language.)

10 To help us work together to resolve these
11 important issues of not just academic and scholarly
12 thinking, but of spiritual and feeling. And that
13 yesterday was very difficult and it was very
14 emotional and very trying. And I asked that we
15 work together to resolve these issues in a clear
16 and precise manner.

17 (Native American language.)

18 SHERRY HUTT: Madam Chair –

19 DAVID TARLER: Can I make one comment?

20 SHERRY HUTT: Okay.

21 DAVID TARLER: Madam Chair, I have a
22 housekeeping announcement, and this is for Review
23 Committee members and any presenters, when you
24 speak, please speak into the microphone. The
25 proceedings are being recorded, and they cannot be

1 recorded unless the speakers are speaking into the
2 microphone. Thank you.

3 ROSITA WORL: Thank you. Let us – we have some
4 changes to the agenda?

5 **COMMENTS BY NATIONAL NAGPRA PROGRAM MANAGER**

6 **SHERRY HUTT**

7 SHERRY HUTT: Yes, and Madam Chair, before you
8 get into that, I would like to make a statement to
9 you all and a request to you all. By virtue of the
10 regulations, the program is responsible for this
11 committee, for safeguarding the integrity of this
12 committee and the decisions of this committee. And
13 as the – just by example when the GAO was here
14 yesterday and you all asked them questions, you
15 took them to task for saying things in their report
16 to Congress, which they told you yesterday were
17 unfounded without factual basis, and you asked them
18 a number of questions on that regard. And to have
19 decisions that are not based on fact or to call
20 questions on the underlying analysis or the
21 analysis from which the determinations are made
22 questions integrity and diminishes the weight. And
23 in that regard, I need you to also reflect on this
24 committee and your conduct of business, and I need
25 to – just from being here in the room, I need to

1 bring some things to your attention and to make
2 certain requests of you.

3 The matters that were presented yesterday were
4 very sensitive and very fact bound, and I am – as I
5 sit here and as I’ve been through a number of
6 Review Committee meetings even before coming to
7 this position, I am absolutely convinced that
8 Congress was brilliant. There are many things
9 about NAGPRA of which I am – I think highly of
10 Congress, but certainly having this committee was a
11 stroke of brilliance because it enables people to
12 come forward and bring sensitive personal matters
13 to you all that do not belong in court, and you
14 provide a forum in doing that. And in so doing,
15 you are also safe keepers of that forum and making
16 sure that everyone is comfortable in that forum so
17 that they will bring you matters. And the
18 decisions that you make are based on your well-
19 reasoned analysis, your wisdom and your experience,
20 and it is because of that that when things go to
21 court judges defer to you all, such as in the case
22 that I know that you enjoy that where the court
23 said that you must defer to – you must take into
24 consideration the Review Committee. So it is that
25 integrity that is key, and integrity is part of

1 process. It is part of the vision that people
2 listening and coming into your house have when they
3 sit down.

4 The other thing that I'm convinced of is that
5 the decision yesterday was properly put before you.
6 It was a decision on fact, and there are a number
7 of facts for you to consider. But I must – based
8 on some of the things that occurred yesterday, I
9 must point out to you some of the things that were
10 viewed by people in the audience that were of
11 concern. And I have some – I have some curative
12 suggestions and requests of you. But not all
13 parties yesterday were given the same opportunity
14 to present and time to present. We did not hold to
15 that hour per side, and as a consequence we went
16 late into the evening. One of the parties was
17 asked to begin her presentation when there were
18 only three people on the stage, and she said, do
19 you expect me to speak when you're not listening.
20 That conveys a very negative impression. I stepped
21 forward at that time. I interjected myself. I
22 have never interjected myself into a Review
23 Committee meeting before, but it was necessary to
24 do so to safeguard due – the fundamental fairness
25 and to – so that your integrity of decision will

1 not be questioned.

2 There were questions asked of the witness for
3 which there are items in the materials to answer
4 those questions. And the materials are voluminous
5 and they need to be considered. And there was -
6 there were times when the witness was interrupted
7 by other parties taking phone calls and speaking in
8 full voice and interrupting her presentation, and
9 no one suggested that the room be quiet and give
10 care and concern to all parties. So we have an
11 obligation to safeguard this precious forum.

12 So I ask you then in going forward and in
13 considering the matters, I ask you that if any of
14 you feel that you've not been able to consider all
15 of the information, and there was a good bit of
16 information that was presented to you last time -
17 yesterday for the very first time. So if any of
18 you feel that you are not able to come to a
19 recommendation and make determinations on the facts
20 because you have not had the opportunity to read
21 the materials, it's better to abstain than to give
22 the parties less than the full benefit. If any of
23 you feel that the way anything was conducted
24 yesterday impacts on your ability to make a
25 determination on other than the facts, then you

1 make that individual determination. You have the
2 opportunity, the individual decision, you have the
3 option to abstain.

4 If you consider the matters from yesterday, I
5 ask that you do so on – of course, you would want
6 to consider them on the facts, but given all of
7 that which transpired in the room yesterday, I ask
8 that you carefully, in considering this matter, tie
9 your decisions, your basis for your decisions into
10 the materials presented, into the facts, so that
11 anyone looking at your decision will say that it is
12 to be – whatever your decision is is to be well
13 regarded because of the careful nature and
14 contemplation of the actual facts. I would not
15 want you to be in the position that the GAO was in
16 the position of yesterday being very nervous
17 defending their report and disclosing things to you
18 for the first time that were not in their report.

19 So that is – that is just my concern and my
20 request of you. And I hope you will take it in the
21 spirit in which it is given to – because this is
22 such a precious forum. And each of you – and I
23 have to say this, as long as I do have the floor,
24 in spite of what was stated in the GAO report, each
25 of you were chosen by the Secretary in

1 contemplation not with David and I, but with the
2 White House and in many cases with input from
3 members of Congress. You are there – you are here
4 because people of very high authority believe you
5 are the right ones to be on this important panel.
6 There is absolutely no impropriety in the selection
7 of any of you, and you are the ones to handle these
8 difficult situations with the dignity and respect
9 that I know you desire to give. Thank you.

10 ROSITA WORL: Thank you very much.

11 Any comments?

12 **DISCUSSION OF DISPUTE PROCEDURES AS AFFECTING THE**
13 **DISPUTES HEARD AT THE MEETING**

14 SONYA ATALAY: I have a comment. I would just
15 like to ask of the – my fellow Review Committee
16 members if we could perhaps discuss this issue now,
17 rather than waiting until Friday to discuss this.

18 ROSITA WORL: Her comments or the –

19 SONYA ATALAY: Yes, what we – what we might
20 choose to do, the decision that we would like to
21 make as to how to move forward on this, regarding
22 the comments that Sherry Hutt gave.

23 STEPHEN SIMPSON: Are – I'm sorry. I apologize
24 for walking in late in the middle of Sherry's
25 discussion, but are you, Sonya, asking for the

1 committee to decide on the – to talk about the
2 disputes yesterday –

3 SONYA ATALAY: No, I'm asking –

4 STEPHEN SIMPSON: – substantively or the
5 procedures?

6 SONYA ATALAY: I'm asking to talk about the
7 procedures –

8 STEPHEN SIMPSON: Okay.

9 SONYA ATALAY: – and what choices as Ms. Hutt
10 just put forward for us that we have several
11 choices to consider as to how we move forward, and
12 that's what I was asking for us to discuss.

13 STEPHEN SIMPSON: That's what I thought. I was
14 just clarifying for Rosita's benefit so that she
15 knew whether she needed to be up there or not.

16 ROSITA WORL: Right.

17 STEPHEN SIMPSON: Thank you.

18 ROSITA WORL: No, I would have asked that
19 question.

20 STEPHEN SIMPSON: I knew you would have.

21 ROSITA WORL: Let's go ahead and discuss it. I
22 think that there were some weighty things that were
23 raised and that we do need to discuss. Go ahead.

24 SONYA ATALAY: Well, I'm not sure of the
25 process so inform me of the process if I need to

1 be, but I have – I have several issues that I'd
2 like to raise for the committee. One of which was
3 I know that our Chairwoman recused herself, but I
4 was – I'm concerned about my ability to be able to
5 make an impartial decision here, after our
6 Chairwoman spoke – came up and spoke. And I
7 understand that these are very difficult matters
8 and they're very emotional at times, and I'm sure
9 that's what fueled her decision to speak. But I in
10 some ways feel like once some of the things were
11 said that I can't – I'm having a difficult time
12 removing those from my decision making. And I'm
13 questioning if I should recuse myself or if perhaps
14 the committee wants to take a different route, and
15 maybe we could hear from counsel or from others as
16 to what routes we might take. Thank you.

17 DAN MONROE: I'd like some clarification with
18 respect to your remarks, Sherry. Are you
19 suggesting that the Review Committee not ask
20 questions pertaining to information contained in
21 written material?

22 SHERRY HUTT: Absolutely not. Of course you
23 want to ask questions. It was –

24 DAN MONROE: Can you clarify then what you
25 mean?

1 SHERRY HUTT: Yes, it was under — you know,
2 looking at the totality of the circumstances
3 yesterday, one of the witnesses was repeatedly
4 asked the same things and she kept saying it's in
5 these materials, these materials. It conveys an
6 image that the materials were not read. That in
7 and of itself is not hugely problematic, but when
8 that same person is also asked to begin a
9 presentation when the Review Committee members —
10 half the Review Committee members aren't up there
11 and she said, do you expect me to present when
12 you're not here, that's saying to the witness or to
13 the presenter or to the entity that is represented,
14 you may speak but we're not listening. And when
15 the individual isn't given, you know, the time
16 because we've allowed a banter back and forth
17 between the people, each of these things
18 individually is an issue, put together as a package
19 conveys to all and conveys to all in the room that
20 do you want to bring things to this committee?
21 Will you be regarded equally in all of you? And
22 will this committee then take all of that and
23 consider it fairly and impartially?

24 So it was not — certainly you ask — you asked
25 very good questions. As a group you asked fabulous

1 questions, but what I'm giving you is feedback in
2 terms of how the whole process yesterday was
3 regarded by all of those viewing it in the room.
4 And I think you would want to know that because
5 you're - anything that you do, you're dealing with
6 such sensitive issues that I would think you would
7 appreciate dealing with it so that there would be
8 no question on the actions that you take.

9 ROSITA WORL: Maybe counsel could address
10 Sonya's issue.

11 SONYA ATALAY: I'd like to add just another
12 comment if I could, which is to say that I was also
13 very concerned that both sides weren't given equal
14 time. That was concerning to me. And I know we
15 went late, but I had a number of questions that
16 were based on the questions that are posed to us in
17 these disputes that I wanted to ask that I wasn't
18 able to ask because of this not having the equal
19 amounts of time. And those weren't questions that
20 were repeating the materials. It was, as everyone
21 can see, a large amount of materials, but I
22 carefully spent many days reading those materials
23 with those questions in front of me, the questions
24 that we were supposed to be asking.

25 So I don't feel that my questions were

1 repeating information that was in there. I wanted
2 that time to be able to ask questions that weren't
3 in the materials, and I wanted those clarified.
4 And I didn't feel that just because of the issue of
5 time we were able to get to those in a fair and
6 balanced way. And that's what I'm trying to raise
7 is the issue that — particularly with the concerns
8 raised in the GAO report about our committee being
9 seen as being balanced, that's why I'm raising
10 these issues just because of those points. So I
11 just wanted to clarify there are multiple issues
12 that I was concerned with.

13 ROSITA WORL: Go ahead, Carla.

14 CARLA MATTIX: We don't — we don't have
15 anything in the dispute procedures that clearly
16 address this situation. However, in the past when
17 some difficult issues have come up in the context
18 of disputes, some of the things that have happened
19 have either been to defer additional consideration
20 of the dispute to a future meeting if more time is
21 needed to consider the matters and to have
22 additional questions and answers and time to go
23 over materials. Another option that has occurred
24 in the past, is that committee members short of
25 fully recusing themselves from the matter, would

1 still participate in the discussions but then
2 abstain in the final findings or votes if they felt
3 uncomfortable for whatever reason for making some
4 final vote determination. But those are - those
5 are pretty much the way things have been handled in
6 the past, and it might be something to consider for
7 future procedures if some more concrete process in
8 this type of situation is considered to be needed.

9 MERVIN WRIGHT, JR.: Madam Chair.

10 ROSITA WORL: Mervin.

11 MERVIN WRIGHT, JR.: I just would like to state
12 that, you know, when it came time for the testimony
13 of the University of Pennsylvania, I recognize that
14 there were only four members here including myself,
15 and when you raised the question, Sherry, there was
16 dialogue that took place as I saw the other
17 committee members coming down the hall, that we
18 used that time to give them that opportunity to get
19 up and be seated before the University of
20 Pennsylvania proceeded. So certainly she raised
21 the question when she was called upon, and we took
22 that opportunity to allow those committee members
23 to be seated.

24 And I also recognize that beings that there
25 were only two witnesses on behalf of the University

1 of Pennsylvania, and I just briefly spoke to David
2 about the – the amount of witnesses that do come
3 forward in disputes, that certainly when you do
4 bring attorneys into the question it begins to go
5 back and forth, rebuttals and responses. And I
6 don't believe that the Review Committee is
7 obligated to restrict witnesses in a dispute. And
8 with the number of witnesses that were
9 representative of the Alaskan contingency and
10 seeing that there were only two for the university,
11 I mean, you know, you really can't fill that time
12 to allow the university to continue on and on and
13 on if they've presented their testimony and
14 representation of their position.

15 SHERRY HUTT: Let's be clear on the record that
16 the University of Penn presenter did not – was not
17 required to speak until you were all up there. She
18 was first asked to begin speaking when you all were
19 not up there. That's when I stepped in. And then
20 we waited until everyone was seated for her
21 actually to begin. So all of her presentation was
22 heard by all of you and the record should be clear
23 on that, but it's the need to intervene. And then
24 the record will indicate whether she asked for
25 quiet so that she could make her presentation two

1 or three times. No one from officialdom assisted
2 her in having the quiet, respectful opportunity to
3 present that was given to others.

4 In terms of the back and forth, there will be
5 times – I mean, lawyers will make presentations.
6 We all view lawyers like consortiums. They're
7 people who speak on behalf of groups or others.
8 And despite the GAO's report on that, these
9 sometimes lead to great efficiencies and abilities
10 of people to bring things. So I would not – I
11 would hope that you would not restrict lawyers or
12 consortiums or however the parties want to make
13 their presentations. That's different from, like
14 you say, the back and forth.

15 In a courtroom, there's no back and forth like
16 we had yesterday. That is sometimes called
17 badgering, and it can be rude. To use a nonlegal
18 term, it's just rude. If in the future that sort
19 of thing happens and either the Chair or the DFO
20 does not step in and stop it, I will stand and stop
21 it.

22 I think that it helps to have the time limits
23 that were discussed between the substitute Chair
24 and the DFO, that there be an hour to each side,
25 and then they decide how they want to spend their

1 hour. Do they want to reserve some time to rebut
2 what the other says, or do you build into your
3 procedures a certain amount of time for that –
4 let's not call it rebuttal but say responsive time,
5 so that you all have a full picture. And then, of
6 course, your questions are probably the most
7 important part of the whole thing, because that's
8 really getting down to the meat of what you all
9 want.

10 But the back and forth banter is not something
11 that assists the process and it really puts
12 witnesses or presenters in a feeling of being –
13 puts them on the spot, and the person yesterday who
14 is an attorney is probably better able to handle
15 that than most, but if that had been a nonlawyer,
16 they would have been really –

17 STEPHEN SIMPSON: Rattled.

18 SHERRY HUTT: – rattled I think would be a good
19 term, and again if – we're very hesitant from this
20 table to intercede on what you all do, and I did
21 not enjoy doing that yesterday, but I will stand to
22 do it in the future. And I hope that you will take
23 it in the spirit in which it's intended, and that
24 is because in the heat of matters sometimes things
25 get a little enthusiastic, and we're watching out.

1 And I have the bottom-line authority. If anybody
2 is responsible for anything that happened
3 yesterday, it is me. By virtue of the regulations,
4 I'm responsible. And so – and I take that very
5 seriously.

6 CARLA MATTIX: And I just want to add that what
7 Sherry is saying is not something she's doing on a
8 discretionary basis. It's required. The Federal
9 agency has to ensure that as a Federal Advisory
10 Committee under the FACA that these meetings are
11 run in a certain manner. And so Sherry does
12 ultimately – and the agency, the Department – has
13 that responsibility legally, so I just wanted to
14 reinforce that.

15 ROSITA WORL: Okay. What I – I think we have a
16 couple of different issues here. One is the
17 dispute procedures, and we do have it on our agenda
18 that we would be discussing the dispute procedures.
19 But I see two, you know, two recommendations or at
20 least two issues. One is the recusal of a Review
21 Committee member, whether they be the Chair or, you
22 know, a member. How do we want to handle that?
23 Our procedures do call for if there is I guess
24 perceived conflict that the individual would recuse
25 himself/herself, as well as the DFO. I think it's

1 in our procedures where we speak to that.

2 Do we wish to go further than that? I mean,
3 are there other additional things that we would
4 like to say that the recused Review Committee
5 member should not participate in any way in the
6 dispute? I mean, do we want to add that in the
7 dispute procedures? I mean, that is a
8 consideration.

9 And then the other we could recommend – add to
10 our procedures that the equal time will be strictly
11 enforced. And then I don't know – I mean, I think
12 the questioning is something that, you know, that
13 is part of the Review Committee's responsibility,
14 but are there constraints to that that we might
15 need? Those are, I think, all discussion issues
16 for the dispute procedures.

17 SONYA ATALAY: I have a question about that.
18 Can you advise please? So if someone from this
19 committee recuses themselves, does that mean that
20 they – my understanding was that if you recuse
21 yourself you're not able to participate in the
22 discussion. Is that correct or is that not
23 correct?

24 CARLA MATTIX: I think what we – what we
25 associate with the term "recusal" in the dispute

1 procedures is a full exclusion from the entire
2 discussion that's at hand, and that's usually done
3 because of some actual or perceived conflict of
4 interest in the matter. So a recusal is a full
5 staying out of the discussion and that entire
6 matter. And abstaining is what I kind of discussed
7 before where you may still – you may not have a
8 personal interest in the matter but – and you may
9 participate in the discussions, but for some reason
10 you, in the final determinations, decide not to
11 actually put your vote in for whatever reason is
12 appropriate for you. Does that answer –

13 But we may want to look at, in the dispute
14 procedures, having more clarity about what recusal
15 fully means. I think there's – it's a general term
16 of art and it's out there, but we may want to put
17 some more detail in that.

18 STEPHEN SIMPSON: Right now the procedures read
19 that "Situations may arise in which individual
20 Review Committee members or the DFO have, or may
21 appear to have, a conflict of interest regarding a
22 particular dispute. In such circumstances, the
23 member or DFO will recuse themselves from the
24 Review Committee's consideration of the dispute.
25 In the event and for the time that the DFO must

1 recuse him- or herself as DFO during consideration
2 of a dispute, the DFO will delegate his or her
3 responsibilities to another Federal employee who
4 does not and would not appear to have a conflict of
5 interest."

6 So they do provide a little more information
7 on what happens if the DFO has to recuse themselves
8 but not on a committee member, and you could
9 certainly – you could certainly expand on that.

10 MERVIN WRIGHT, JR.: I'd just like to suggest
11 that when this item comes up on the agenda that we
12 continue this discussion.

13 ROSITA WORL: But there is a continuing issue,
14 and that is the issue with UPM, did they have
15 adequate time to present? We have – I mean, the
16 Review Committee will be addressing the issue again
17 on Friday, and I'm wondering if it would proper at
18 that time to say if UPenn had additional comments
19 to make would that be appropriate?

20 STEPHEN SIMPSON: David advises me that they
21 will not be here on Friday.

22 Are they available by phone? No.

23 ROSITA WORL: Are they here today?

24 STEPHEN SIMPSON: No, Madam Chair.

25 ROSITA WORL: Would they feel – I mean, could

1 they possibly participate via audio conference
2 call? I mean, we have done that in the past.

3 SHERRY HUTT: And I think the concern is if you
4 invite back UPENN that then you would want the
5 other parties here. So at this point, my
6 suggestion is – and the suggestion I was making was
7 really one more of policy than law, and that is
8 that in deliberating on this and deciding that –
9 and you all have been so good in terms of stating
10 the underlying basis for your decision that you be
11 sensitive to that in this matter in being certain
12 to do that in each aspect of your determinations
13 that you would make, even to the point where if you
14 – if you get to a point of writing something out,
15 you might even have a subcommittee write something
16 out or what have you, but that you be very careful
17 with that under the circumstances.

18 DAVID TARLER: Certainly we can give the
19 University of Pennsylvania an opportunity to
20 provide any more comment. I think the issue though
21 is raised with respect to the University of
22 Pennsylvania's response. If the University of
23 Pennsylvania responds that they do not choose for
24 any reason to participate on Friday when they were
25 on the agenda for Wednesday's dispute, is that –

1 does that provide a cure to any issue that might
2 arise. I can't provide the answer to that.

3 ROSITA WORL: Well, it seems that Sherry has
4 provided the best – the best advice, and that is
5 that the committee would take due deliberation on
6 the material that has been provided, the comments
7 that were made, you know, and duly consider those
8 things in their findings.

9 DAN MONROE: Can we just discuss this a little
10 more?

11 ROSITA WORL: Go ahead.

12 DAN MONROE: I mean, I'm not sure that that's
13 necessarily the best way to proceed. Due to the
14 nature of the testimony provided yesterday, the
15 University of Pennsylvania, which had ample
16 opportunity in my view to complete their initial
17 testimony, in fact had fairly limited time for us
18 to ask questions. And as a matter of fact, only
19 two of us had the opportunity to ask questions of
20 the University of Pennsylvania representatives.

21 I think that it's clear to everyone that it's
22 imperative that there be both a perception and a
23 reality that what we are hearing and the process
24 that we go through is fair and equal for everyone.
25 And that the Review Committee have full opportunity

1 to ask any questions it deems appropriate in a
2 manner that enables representatives of
3 organizations, tribes, universities, museums, to
4 respond in an appropriate way. And the truth is we
5 were very, very constrained at the end of the day.
6 It was necessary for the university representatives
7 to give very succinct and very short answers. It
8 was necessary for us to give very succinct
9 questions, and only two of us had the opportunity
10 to do so. So I must say I'm a bit uncomfortable
11 with the notion that we just proceed on the basis
12 of taking that all into account, whatever that
13 means. Because in the process of doing that, it
14 leaves a concern that we really did not, for a
15 whole variety of reasons, have sufficient time to
16 actually do full and fair consideration of all of
17 the information that they'd presented and our
18 capability to inquire of them with respect to a
19 number of the facets of that information.

20 So I'd like to discuss it a bit more. I'm not
21 sure that's the best resolution in my mind, to just
22 simply proceed. I think I'd be more comfortable
23 personally inviting the university, and it would be
24 their decision entirely, as to whether or not they
25 would be willing and able to make any additional

1 comments they wish, and whether they would be
2 willing and able to have the Review Committee
3 continue questioning in a vein that is more
4 appropriate in terms of time until all the
5 committee members have exhausted the questions that
6 they want and the university had exhausted the
7 points they wish to share with us. Just my
8 viewpoint.

9 ROSITA WORL: Any comments or – I guess, can we
10 extend an invitation to them to participate in
11 person or via audio conference call to allow them
12 to have that – the committee to have the time to
13 pose questions?

14 SONYA ATALAY: I would like to raise just a
15 small point here and I wonder, out of no disrespect
16 to our Madam Chair, if we would be able to for this
17 discussion, if we are going to have this
18 discussion, appoint another Chair for this
19 discussion? For the same reasons as I felt the
20 conflict yesterday, having Chairwoman Worl as the
21 Chair of this discussion, I would just ask if
22 perhaps Dan Monroe or Mervin Wright or another
23 person could be – serve as Chair during that time.

24 ROSITA WORL: During this discussion now or
25 during when we –

1 SONYA ATALAY: If we are going to have this
2 discussion because it pertains to the dispute –

3 ROSITA WORL: Okay.

4 SONYA ATALAY: – that Madam Chair was recused
5 from that we would have another chairperson leading
6 this discussion. If we are going to have it now or
7 if we have it during the dispute procedures
8 segment, which is a little later this morning.

9 ROSITA WORL: Well taken. I think, I mean I
10 was trying to keep it on the procedures and then we
11 had the UPenn, so for purposes of this discussion,
12 Merv, will you please chair?

13 MERVIN WRIGHT, JR.: Based on the sensitive
14 nature of this issue and having participated in
15 that dispute yesterday as the Chair, I would
16 suggest either Dan or possibly Eric. Thank you.

17 ROSITA WORL: All right. Dan?

18 DAN MONROE: I think we need to actually make
19 some decisions in terms of the Review Committee
20 and, taking all due respect and consideration of
21 your recommendations, Sherry, at least discuss how
22 we wish to proceed, because the facts on the ground
23 are that there was simply not time to do a full – a
24 full exploration of the testimony by the University
25 of Pennsylvania. And personally I think that's a

1 point we need to discuss, and we need to take into
2 account the recommendation.

3 We have a number of options in front of us.
4 One option would be to proceed to deliberation and
5 make some decisions on the basis of the information
6 that we received, which is by any measure
7 voluminous in terms of both oral and written
8 testimony. The other option is to explore whether
9 or not the University of Pennsylvania Museum wishes
10 to make itself available by teleconference to
11 enable it to make any additional comments it wishes
12 to make or provide any additional information, and
13 Review Committee members in turn to ask any
14 questions they may wish. A third option would be
15 to actually delay this decision, and take it up at
16 the next Review Committee meeting and provide
17 opportunity, I suppose, for both parties to provide
18 additional information and to be, without the time
19 constraints we experienced, able to go through the
20 remainder of this process.

21 So those are at least three things that we
22 could do in my mind. Let's open it up for
23 discussion.

24 SONYA ATALAY: I'd also like to add to that
25 what are our options in terms of the initial issue

1 that I raised of having the Chair of this
2 committee, who recused herself, then speak within
3 the proceedings yesterday. What are our options
4 with that? Are we able to, as a committee, make a
5 decision attempting to remove her comments from –
6 not from the record of course, but from our
7 decisions? Are we able to say that we could
8 attempt to do that? Is that an option for us? I
9 just want to make sure that that procedure is
10 followed whatever the procedure might be, that is
11 there some suggestion or solution to that?

12 And also just to add to this, and I just want
13 to include this because we're having this
14 discussion now, there was the issue yesterday
15 during the first dispute that there were Elders
16 speaking on both sides, and for me there's a
17 concern again of trying to make decisions in terms
18 of having Elders speaking with authority on both
19 sides of this. And so that may then add to our
20 decision making in terms of are we able to come to
21 a decision on this issue, or – I don't know how
22 other committee members felt about that, but that
23 may then have some weight in the decision that we
24 go forward with.

25 DAN MONROE: Other comments? Other comments?

1 ALAN GOODMAN: Well, correct me if I'm wrong,
2 but not only was there not time to ask questions of
3 the University of Pennsylvania, but there was also
4 very little question and timing of questions
5 directed to the Hoonah Indian Association and the
6 Huna Totem Corporation. So my concern is if we do
7 invite back one party, we really ought to invite
8 back both.

9 DAN MONROE: Thank you.

10 This is a -- this is really critically
11 important and I guess what I'd like to do is ask
12 every member of the Review Committee to comment on
13 how they individually feel we should proceed.

14 Alan?

15 ALAN GOODMAN: Well, I'm thinking this over. I
16 -- at this point, given that we have the
17 unlikeliness, I would think, of trying to get both
18 parties back it might be that we have a discussion
19 on Friday, and if we're not able to reach any sort
20 of consensus, then we may need -- that we simply
21 need more information and we would have to continue
22 at another time.

23 DAN MONROE: Thank you.

24 MERVIN WRIGHT, JR.: Yeah, I would agree that
25 when the discussion comes up tomorrow and as we

1 proceed into the agenda today discussing the
2 dispute procedures, I mean, certainly our options
3 are open to consider what is necessary, what is
4 required by the regulations, and given the time
5 constraint and given the time factor that were
6 given to both parties, you know, just – we get to
7 that point tomorrow to discuss this and, you know,
8 in reviewing the information, you know, the one
9 binder is practically full of just those two
10 disputes yesterday. All that information
11 considered, and we may just have to exercise that
12 third option that was presented that we move this
13 to a later time.

14 SONYA ATALAY: My thoughts at this point are
15 that perhaps agreeing with my fellow committee
16 members that have already made comments on this
17 that we could then discuss this further on Friday.
18 And I guess what I would add is that what my
19 understanding of what we're being asked to do as a
20 Review Committee is related to the specific
21 questions that were posed in our binder that we had
22 put forward, which is if the parties had met the
23 burden of proof about these specific questions.
24 And so we were given a large amount of material to
25 help us make those decisions and I do feel that

1 with that material I would be able to come to some
2 decisions, specifically related to those questions.
3 So I feel like I could do that and what I – I would
4 like to just ask that then I be able or myself –
5 others – myself and others be able to make the
6 decision about recusing themselves or at a later
7 point on – or abstaining on Friday.

8 ERIC HEMENWAY: I'd like to agree with Alan
9 about if you have the University of Pennsylvania
10 come and present at a later time or give
11 information and not having Hoonah be able to have
12 that respect of equal amount of time. And I would
13 just like to acknowledge that yesterday was
14 extraordinary in the presentations and the amount
15 of people, and that it was a very difficult process
16 to hear all this testimony. It wasn't just a
17 balancing of analytical and academic research. It
18 was emotional. It's never an easy thing to see an
19 Elder break down and cry, in public at that.

20 So we needed those breaks and it's hard to –
21 and I think we moved quite quickly, even in the
22 time constraints. I mean we convened within five
23 minutes, usually. We had a half-hour lunch here,
24 so we made the best accommodations to try to meet
25 the requirements of all the people presenting.

1 I would have a suggestion that in the future
2 if there's multiple disputes to have them on
3 different days, and that with the agenda that we
4 would have like a dispute one day and a dispute
5 another because it seems this - having all this in
6 one day is just - it's not in a - you can't do it.
7 And we had presentations that had to get bumped.
8 The one presenter had to wait until the end of the
9 day to present. And yes, time was an issue and
10 these people came from Alaska and they came from
11 Pennsylvania. And I don't - personally I don't
12 know if these Elders would travel again this great
13 distance to DC or to the Lower 48, as they call it.
14 So I would feel more comfortable making - you know,
15 going forward with the decision.

16 In regard to the material, I feel comfortable
17 that all the Review Committee members read it and
18 went over it very thoroughly. And there was a
19 comment in one of the - from the Alaska State
20 Museum that - they said that, well, none of the
21 Review Committee members are going to have a fair
22 and balanced opinion because of one of the Review
23 Committee members, Rosita, being on there, and
24 she's part of the dispute procedure; that it's
25 going to be tainted; our decision is already

1 tainted because of Rosita's involvement. I thought
2 that was really unfair that they had this
3 preconceived notion that we couldn't make
4 independent decisions on our own, that it wasn't
5 even really worth bringing to the Review Committee
6 because we already had our minds made up.

7 And so I think it's really important that we
8 go forward and present that we are independent and
9 chosen for our respected fields. We have our
10 religious leaders, we have our scientific
11 community, and that it's created in a balanced
12 manner. Thank you.

13 DAN MONROE: Thank you.

14 ADRIAN JOHN: This will be my first time on
15 record, so being new to this it was - I mean, I
16 agree with Eric and Alan down on the other end
17 that, you know, given fairness and opportunities to
18 hear both parties again would be appropriate, and
19 maybe in the dispute situation that, you know, we
20 would just hear - I'm not sure if in the
21 disposition part in the end that's when those
22 questions come up to ask them, if they're required
23 to be here that long. It may be more appropriate
24 just to hear everything first. But I know from
25 some of the questions from yesterday that, you

1 know, that information – there's a lot of
2 information in there. But I'm not sure some of
3 those little details were in the reading, not from
4 what I seen. So there was just little things, you
5 know, that would confirm a couple of ideas that
6 form what Sonya and Dan asked yesterday that – but
7 to hear them – again, if it's the fair opportunity
8 to hear them and to make a decision for them would
9 be the most appropriate thing at this time because
10 it is – I mean, they've been doing it for – say, in
11 the case of UPM, they've been doing it for 15 years
12 and they have to wait another 6 months, you know,
13 it could be trying for some of them. But I agree
14 like if we could, if not, then, you know, we may
15 have to – if we can't come up to any kind of
16 decision then we may have to follow that third
17 choice and go to a different time, which
18 unfortunately we wouldn't be able to hear probably
19 from some of the same people, which of course we
20 have to look is that fair too, you know? But that
21 would be my decision at this time.

22 DAN MONROE: So what I hear is that there is a
23 sense that, procedurally, we need to take a look at
24 how we handle disputes in the future, and we will
25 have that discussion later on. And in recognition

1 of your request, we'll appoint someone to lead that
2 discussion aside from our Chair. And that given
3 the cost and the time required for all of the
4 parties to appear before us, we should proceed with
5 a discussion tomorrow - I think that seems to be
6 the prevailing sentiment - but take fully into
7 account that there were some constraints that arose
8 because of the unusual circumstances yesterday, and
9 make a determination as to whether or not we feel
10 comfortable going forward with a decision. So
11 that's how we'll proceed.

12 I thank everybody for the opportunity to
13 express your views. And if everyone is comfortable
14 with that course of action, that's how we'll -
15 that's how we'll go forward. Is that fair to
16 everyone on the committee? Very good. Thank you.

17 SHERRY HUTT: And I would just like to add if I
18 might that we would not normally put two disputes
19 on one day, but the presenters had some conflict
20 and that was - our understanding was that was how
21 it needed to be.

22 DAN MONROE: Right. I understand that there
23 were a number of things that we were trying to
24 accommodate with the schedule. I think in the
25 future, at least speaking for myself, we'll have to

1 do everything in our power to avoid hearing such
2 intensive disputes concurrently on the same day.

3 And with that, I think we turn it back over to
4 you, Rosita.

5 ROSITA WORL: All right. Let's move on to our
6 agenda. We have a presentation, A Study of the
7 Review Committee's Decision-Making Under 25 U.S.C.
8 3006. Carla - no, I'm sorry, Sally, Sally Butts.

9 SHERRY HUTT: If I might introduce Sally Butts.
10 She comes to us from the University of Idaho Law
11 School as an intern. However, prior to going to
12 law school she had a career with the Fish and
13 Wildlife Service, so she has quite a background in
14 land management experience. And we were delighted
15 to have her as a wise and talented researcher in
16 our office this summer. And the project that she
17 worked on was an analysis of Review Committee
18 actions. And this was, as so many of our homework
19 assignments, one that you gave us. And we were
20 pleased to have that and very pleased to have Sally
21 to address this assignment that you have given. So
22 Sally will then present on her study and findings.

23 **PRESENTATION: A STUDY OF THE REVIEW COMMITTEE'S**
24 **DECISION-MAKING UNDER 25 U.S.C. 3006(C) (3), (4),**
25 **& (5)**

SALLY BUTTS

SALLY BUTTS: Thank you very much for the opportunity to present my work from this last summer. In addition to Sherry's introduction, I just wanted to mention also that in the past I had worked as a wildlife biologist for the Quinault Indian Nation on the coast of Washington. So that gave me, I guess, a greater sense of appreciation from that experience to do the work that I did this summer.

Sherry sort of characterized my project, but I'm just going to go through how I had perceived the project. This was a project that was requested, I think, for some time from the Review Committee. I looked at findings and recommendations by the Review Committee since it was formed in the early 1990s, and I conducted some analyses on those findings and recommendations, and I collected information to show what has happened since the Review Committee's involvement.

Over the course of the summer and fall, as I've been working on this project, I've gained such an appreciation for the work that you all have done over the 20 years, including your predecessors. And I also appreciate the complexity and the

1 importance of the work that you do.

2 So the parts of the Review Committee actions
3 that I looked at are under 3006(c) in the
4 responsibilities, under subpart (3), the Review
5 Committee shall be responsible for, upon the
6 request of any affected party, reviewing and making
7 findings related to the identity or cultural
8 affiliation of cultural items or the return of such
9 items; subpart (4), facilitating the resolution of
10 any disputes among Indian tribes, Native Hawaiian
11 organizations, or lineal descendants and Federal
12 agencies or museums relating to the return of such
13 items, including convening the parties to the
14 dispute if deemed desirable; and then subpart (5),
15 compiling an inventory of culturally identifiable
16 human remains that are in the possession or control
17 of each Federal agency and museum and recommending
18 specific actions for developing a process for
19 disposition of such remains.

20 The sources of information that I used to do
21 my work, typically I would begin with the Federal
22 Register notice of the dispute findings and
23 recommendations or findings of fact, and then from
24 there I would use other sources of information to
25 fill in gaps to complete the story so I would be

1 knowledgeable of the story of what happened. I
2 would look to the Review Committee meeting minutes,
3 the transcripts of the meetings, the notebooks that
4 you all get for the meetings with documentation
5 provided by the parties to the disputes or
6 findings, Federal Register Notices of Intent to
7 Repatriate or Notices of Inventory Completion,
8 information from the National NAGPRA Program staff,
9 who was incredibly helpful throughout the summer,
10 information from the program's internal databases
11 and program files, and then information directly
12 from museums, agencies, other organizations with
13 NAGPRA responsibilities, Native American tribes,
14 other Indian groups, and Native Hawaiian
15 organizations.

16 I know this is incredibly detailed and it
17 strains the eyes, even for me to look at it, so I
18 apologize for the detail, but I just wanted to
19 point out a couple of things. First of all, there
20 are 14 entries on this list. That represents the
21 collection of disputes and the one findings of
22 fact, which is item number 14. So I think that's
23 noteworthy to show there haven't really been a
24 whole lot of disputes or findings over the 20 years
25 of the committee's creation.

1 I want to draw your attention to row number 2
2 in the very first – well, second column, which is
3 the category column, and there's more text in that
4 box and you don't need to worry about what that
5 says, but I'll read it to you. It says, This was
6 originally framed as a dispute that I believe
7 involves issues of law. And real briefly, without
8 going into what the dispute was, the question that
9 really came before the Review Committee, and it was
10 loosely characterized I think in all the records,
11 is really what is a lineal descendant, and that now
12 would be I think easily answered by the regulations
13 that were created after this dispute came before
14 the Review Committee. And then also there was a
15 question about what qualifies as enough information
16 to show that an organization is a Native Hawaiian
17 organization. And so those I think are not
18 properly characterized as a dispute. And
19 noteworthy, the Review Committee appropriately, in
20 my opinion, refrained from making findings in that
21 case.

22 Then number 11, that box in the category
23 column says, Originally framed as a dispute that
24 involved findings of fact. And in that case, the
25 park really hadn't made a decision as to whether

1 objects were associated or unassociated funerary
2 objects, and they really wanted Native Hawaiian
3 organizations to make that call. And in that case,
4 the - what was labeled as a dispute that really did
5 not involve, in my opinion, a dispute, but rather
6 just a determination of whether they were or
7 weren't associated or not. The committee decided
8 to suggest further consultation in that case.

9 So then - let's see. Over time the issues
10 before the Review Committee, I believe, have been
11 more clearly identified by the parties and the
12 NAGPRA Program because everyone has had more
13 experience with the law and the implementing
14 regulations. I think this is a valuable
15 progression, so that the Review Committee knows
16 what questions are being asked so that you can
17 respond accordingly. And I have seen that in all
18 of the paperwork that I have gone through in that
19 the issues I think are more clearly defined as you
20 go through the time line from the early nineties
21 until now.

22 So I want to go through what was number 6 on
23 that last table in detail, just to show you what I
24 did with the disputes and the findings of fact.
25 This is the Spirit Cave Man dispute, what's

1 commonly known as the Spirit Cave Man dispute. I'm
2 just going to go through the chronology really
3 fast, and then show the work that I did. So in
4 1990 – sorry, 1940, human remains were excavated
5 from Spirit Cave about 75 miles east of Reno,
6 Nevada. In 1995, the BLM and the Fallon Paiute-
7 Shoshone Tribe engaged in consultation over the
8 Spirit Cave remains. In 1997, the tribe asserted
9 claim of cultural affiliation with the remains and
10 requested repatriation. Then in 2000, the BLM
11 determined that the remains could not be culturally
12 affiliated with any tribe or Indian group; however,
13 the remains were determined to be Native American.

14 Also in 2000, the tribe requested the Review
15 Committee's involvement in a dispute over cultural
16 affiliation and repatriation. In 2001,
17 presentations were made by both parties, and the
18 Review Committee found by a preponderance of the
19 evidence a relationship of shared group identity
20 reasonably traced between the tribe and the
21 remains.

22 Also in 2001, the Review Committee recommended
23 repatriation of the remains to the tribe. The BLM
24 did not consider the committee's findings and
25 recommendations in its ultimate decision. As such,

1 the tribe filed suit in 2004 against the BLM in
2 U.S. District Court in Nevada, seeking declaratory
3 and injunctive relief. In 2006, the opinion was
4 issued by the Court holding that the BLM
5 determination of nonaffiliation was arbitrary and
6 capricious for failing to articulate the reasons
7 for its determination, including a fair and
8 adequate consideration of the Review Committee's
9 findings admissible in court.

10 I just wanted to point out; I think this
11 dispute shows that the Review Committee's findings
12 are taken seriously, certainly by a court and now
13 by a Federal agency, BLM. I think this case
14 demonstrates to other agencies and museums that to
15 dismiss the Review Committee's findings is probably
16 unwise because it led to the further events that
17 you see on this timeline.

18 So in 2007 – this is the new information that
19 I was able to collect – the BLM solicited new
20 information from the tribe and interested parties,
21 and those interested parties, I think, primarily
22 were entities that had been engaged in the court
23 dispute so they had already been sort of known to
24 BLM by the court proceedings. With new funding,
25 the BLM was able to hire contractors, consultants,

1 to produce three new reports on the issue of
2 affiliation. And in 2010, this year, by the end of
3 this year, the information that I received in
4 August, July or August from the BLM, the reports
5 from those three consultants were expected and to
6 be reviewed by the BLM Nevada State Director. And
7 at that point, after the review is conducted by the
8 agency, the BLM will proceed with any revision to
9 its determination of cultural affiliation.

10 I just wanted to show you – this is really
11 impossible to look at. It's just for visual
12 purposes, not to get involved in what the text
13 says, but this is a page out of the report that I
14 will be providing to you. And this represents the
15 Fallon Paiute-Shoshone and BLM dispute. And so in
16 this couple of pages for this particular dispute,
17 I've identified the action, the type of action, the
18 parties involved, the cultural items in question,
19 and the Review Committee meetings where the dispute
20 or findings of fact was discussed. I provided a
21 summary of the case including pre-Review Committee
22 actions, what's happened before the Review
23 Committee's involvement, then the actual Review
24 Committee involvement and action, then what's
25 happened since then, the post-Review Committee

1 action. I've provided an analysis and then I have
2 the section on references to back up where all the
3 information has come from.

4 So in terms of analyses for each one of these
5 disputes or findings of fact, I have picked out
6 what I think are sort of the high points of the
7 dispute. I think you could go through any one of
8 these and keep mining for analyses and probably
9 never end, because each one of these disputes or
10 findings is incredibly rich in information. So
11 it's what I thought was the most important or
12 relevant.

13 So here with the Spirit Cave dispute, the
14 points that I wanted to note is that the Secretary
15 of the Interior has a unique situation in having
16 authority over the BLM as an Interior agency and
17 also over the NAGPRA – excuse me, NAGPRA Review
18 Committee as an advisory committee to the
19 Secretary, and the Secretary then is in a unique
20 situation of being able to make an independent
21 decision regarding cultural affiliation and
22 repatriation. If the BLM cannot determine cultural
23 affiliation after new reports that they are being
24 produced are considered, the agency would be
25 subject to the updated regulations on the

1 disposition of culturally identifiable human
2 remains that came out in March of this year.
3 Assuming that the BLM cannot establish right of
4 possession the remains would be transferred to
5 Indian tribes from whose tribal land the remains
6 were removed or that are recognized as aboriginal
7 to the area from which the human remains were
8 removed.

9 Barring the outcomes from the above two
10 points, the BLM could retain the remains for
11 scientific study pursuant to 3005(b), if considered
12 to be indispensable for completion of a scientific
13 study, the outcome of which would be of major
14 benefit to the United States. This last point, I
15 think you can recognize that would be very
16 controversial, but there has been some discussion
17 in this dispute, which I'm sure you all are aware
18 of, and that the remains are very old, I think
19 9,500 years old, and there has been some
20 discussion, not as part of the dispute but
21 surrounding the dispute, that possibly the remains
22 are not Native American. And so I wanted to bring
23 that up because that provision is in the law but I
24 think it's easy to recognize that would be a
25 controversial move.

1 So now I'm switching over to the culturally
2 unidentifiable requests that have come before the
3 Review Committee. Since the Review Committee has
4 been formed, there have been 82 requests for
5 recommendations for disposition of Native American
6 human remains. This table, it has the most updated
7 information on the screen. The paperwork that you
8 have in your binders is a little bit different
9 because I've been able to receive more information
10 from museums and agencies to update the tables that
11 you all have. And so for all four of these columns
12 — so 62 of the 82 requests are represented on this
13 table, and the other 20 we'll get to in a just a
14 minute. All four of these columns are for the
15 transfer of legal control of the remains to the
16 Native American tribe or tribes. In all of these
17 cases all four columns, the Review Committee
18 concurred with the request by the parties, and then
19 in the first three columns the Secretary of the
20 Interior's independent concurrence was also there
21 for those first three columns. The last one — the
22 last column, that's a partial concurrence and so
23 that's what makes that column different there.

24 So in the first column those dispositions have
25 been confirmed, so the legal transfer of control

1 has occurred. So I look at those as sort of a
2 start to finish complete process, and there are 37
3 of those representing 1,047 MNI, minimum number of
4 individuals, and 263 associated funerary objects.

5 The next column all of the pieces are the same
6 except the last – the dispositions are either
7 pending physical transfer or they are pending the
8 close of the notice, the Federal Register notice
9 comment period. And in that case, there are 17 in
10 that category representing 223 MNI, 458 AFOs.

11 The next column, all of the information is the
12 same except the dispositions have not been
13 confirmed, meaning I haven't been able to receive a
14 response from the museum or agency related to those
15 requests. Those represent 1,173 MNI and 1,102
16 AFOs. Of all three of those columns, actually all
17 four – I'll get to the last one here in just a
18 minute – I expect those to all move over into that
19 full and completed category, but it's sort of a
20 snapshot in time when you call and get information,
21 especially for requests that are recent in time.

22 So the last column there are four with partial
23 concurrence, and I think all four of those partial
24 concurrences were because the remains that weren't
25 concurred upon in terms of transferring, there was

1 not enough information to determine that they were
2 Native American. So there were four in that
3 category, two of which the dispositions have been
4 confirmed for the part that was concurred favorably
5 upon, and then one disposition has been unconfirmed
6 and one is pending the close of the notice comment
7 period. That represents 206 MNI and 67 AFO.

8 Then the next set of tables are the remaining
9 20 requests. The first column are reburials where
10 the Review Committee concurred, the Secretary
11 independently concurred, and two of those burials –
12 reburials, excuse me, have been confirmed and two
13 are unconfirmed, so there are four total in this
14 category representing 734 MNI and 17 AFOs. Then
15 the next column the Review Committee recommended
16 further consultation was needed, and I have not
17 been able to receive responses from the parties in
18 this case, in these 10 cases, and this represents
19 732 MNI and 97 AFO.

20 The next column are for protocols that came
21 before the Review Committee to have a protocol for
22 the dispositions in a sort of global way for that
23 particular museum or Federal agency or state agency
24 or other NAGPRA organization. The Review Committee
25 concurred. The Secretary conditionally concurred.

1 Usually a few more pieces of information needed to
2 be added to the protocols. In both cases there are
3 two in this category, the protocols were finalized,
4 and there were no particular numbers of individuals
5 or funerary objects associated with the protocols.

6 The next column, I call these unresolved –
7 they are unresolved for various reasons and there's
8 only three in this category. One of them was
9 further consultation needed. One of them, not
10 enough evidence to determine that the remains were
11 Native American, and one of these is involving a
12 nonfederally recognized Indian group. And in all
13 three of these cases there has been no transfer, so
14 the agency or museum other entity has retained the
15 remains. In this case, there are 60 MNI and 5 AFO.

16 The last category is an unusual one. It's a
17 reburial plan where the Review Committee agreed in
18 concept. There was no Secretary concurrence.
19 Reburial was confirmed. There's just the 1 in this
20 category representing 11 – excuse me, 11 MNI. And
21 I think that's supposed to be five. I'm sorry,
22 that's supposed to be five on the screen there.
23 And this was a nuclear site, the Fernald Nuclear
24 site, and so it was a pretty unusual one under the
25 Department of Energy, and so there was tribal

1 involvement, I think fairly substantial tribal
2 involvement in that reburial, but it was a pretty
3 unique situation, and so that's the case with that
4 one.

5 So that really kind of gives you a brief look
6 at what I did over the summer. And the reports,
7 I'm still cleaning up just a couple of things, but
8 those will go to the National NAGPRA Program staff
9 and the Office of the Solicitor for their review,
10 here in probably another week. And at that point
11 after their review, then it would come before the
12 Review Committee for your review and comment and
13 feedback. I wanted to point out too that in the
14 report, I have recommendations based on all that I
15 have looked at in the disputes, findings of fact
16 and CUI requests, some things that I think might be
17 helpful to consider in terms of future work in
18 those areas. And because I'll be studying for the
19 bar in the next couple of months, you'll have
20 plenty of time to, I think, complete your review,
21 and then hopefully the reports will be on the
22 NAGPRA Program website with all the feedback
23 incorporated sometime in the spring.

24 I just wanted to point out one thing too is
25 that my summer work was featured in Idaho Law

1 Magazine, and so just a little PR for the NAGPRA
2 Review Committee that's gone to Idaho. I know it's
3 gotten good circulation around Idaho, so you all
4 are a part of that. So thank you for giving me
5 that opportunity and also glad to see that you all
6 and your work has been — had gotten a little bit of
7 good PR there.

8 I just wanted to acknowledge the NAGPRA
9 Program staff, you all have been wonderful, over
10 the summer and fall and for bringing me here,
11 especially Sherry and David. Lesa Koscielski was
12 very helpful in my work. Stephen Simpson and
13 Carla, I didn't get the opportunity to work with
14 you too much, but I know in your review of the
15 report that will be very helpful. Especially the
16 Native American tribes who provided information and
17 Hawaiian organizations, museums, Federal and state
18 agencies, and other organizations with NAGPRA
19 responsibilities. Some of those people are here in
20 the audience, so I really appreciate all of the
21 good feedback that I got. And I'll answer any
22 questions that you have.

23 ROSITA WORL: Thank you very much for a great
24 report.

25 Do we have any questions from the Review

1 Committee? Alan.

2 **REVIEW COMMITTEE COMMENTS AND QUESTIONS**

3 ALAN GOODMAN: Thank you for a great report. I
4 wanted to ask you about the Spirit Cave dispute and
5 about this relationship between the Secretary of
6 the Interior, BLM, and the Review Committee. And
7 you know, here we see that there was a decision
8 that was brought in front of the Review Committee,
9 the Review Committee made a recommendation, then at
10 some point it sounds like the BLM just simply
11 disregarded the recommendation, it went back to the
12 courts, and now the BLM, as you've written, has
13 solicited new information and is writing its own
14 reports. And so I gather why did we -- you know,
15 one could ask why did we go through this roughly
16 ten-year process if all of the information that was
17 presented to the Review Committee was disregarded,
18 etcetera.

19 SALLY BUTTS: No, I think that's a very, very
20 important question that you ask. In terms of the
21 BLM's new reports, I wanted to point out that they
22 are in, I think from my perspective and what they
23 had told me, in very good consultation now with the
24 tribe, so that's very good that they are getting
25 active input from the tribe and other interested

1 parties. So I look at the Review Committee's
2 involvement in all of these disputes and the few
3 that have gone to court, and I don't dismiss for
4 one minute the work that you all have done because
5 I think it raises the level of the process to where
6 it does get the attention of the parties involved
7 and decision makers, and in some cases that's a
8 court of law.

9 So I don't know that - like for example, with
10 Spirit Cave, after it had gone to court and the
11 court took the Review Committee's findings clearly
12 into consideration in their opinion, that may have
13 prompted the BLM to get new Federal funding to do
14 three new independent reports on cultural
15 affiliation. And to me that's a really strong sign
16 that the Review Committee's work is very important
17 and not to be dismissed. And I think most would
18 agree that having a dispute go to court is not the
19 best - not where you want things to head. But even
20 in those cases where it does, the Review
21 Committee's work is taken into consideration, it's
22 not dismissed, and it - I think it raises the
23 attention and the level of importance of the
24 parties in terms of what happens after such a
25 significant step such as going to court. But you

1 know, there's only 2 of these that have gone to
2 court in the list of 14, and in the other cases
3 that I didn't discuss, there's - the majority of
4 them were repatriations based on the Review
5 Committee's findings.

6 ALAN GOODMAN: Can I just ask a follow up? One
7 comment, I guess, is that I would say that just
8 because BLM is soliciting new reports doesn't
9 necessarily mean that they're reports from
10 individuals with the greatest knowledge of
11 Shoshone-Paiute history and pre - Shoshone-Paiute
12 culture and history. And I think that was part of
13 the problem of their original presentations.
14 That's my comment, as an individual member of the
15 Review Committee and as a scientist.

16 My question was really about what happened in
17 2001, and was there something because the BLM is
18 under Department of Interior that it was - had a
19 little bit more leeway to not take into account the
20 recommendations of the Review Committee or is there
21 anything there at all that -

22 SALLY BUTTS: From my recollection, I believe
23 the BLM really looked at the Review Committee's
24 findings as advisory and, without any disrespect to
25 the BLM, did not properly consider that advisory

1 finding as it should have. And so unfortunately it
2 was forced to take that finding seriously after the
3 court case. So my personal opinion is that in the
4 future the BLM would probably not make that choice
5 again, and they would be more careful in their
6 procedure and how they consider that finding. And
7 I would also think that other Federal agencies
8 would look at that particular example and say, we
9 don't want a repeat, that's expensive to go to
10 court, it takes government resources to do that,
11 and it's not the best pathway if you can avoid
12 going to court.

13 CARLA MATTIX: I have a – I can just clarify a
14 little bit if you would like. The BLM, as a Bureau
15 of Interior, has a responsibility under the
16 Administrative Procedures Act, which is really how
17 this got into court eventually, to make a rational
18 decision based on all the evidence. And in the
19 court's opinion, the Review Committee's findings
20 were part of that evidence that they needed to
21 consider, which was not considered. So essentially
22 what they had done was not – they did not follow
23 the Administrative Procedures Act and the case was
24 remanded. But every agency, Federal agency has
25 that responsibility to consider all the evidence in

1 a fair manner, and the BLM doesn't have any
2 additional leeway just because it's in Interior.
3 They have - every agency, whether it's in Interior
4 or other NAGPRA - agency with NAGPRA collections
5 has that same responsibility.

6 ROSITA WORL: Do you have a question?

7 MERVIN WRIGHT, JR.: Yeah, I have a question.
8 When you started - first of all, thank you for the
9 report, and I think it is enlightening to see the
10 representation of your analysis, certainly your
11 candor in your report is appreciated. And I think
12 when you - when we take a look at the history of
13 our relations with the United States Government,
14 you know, the trust responsibility, the trust
15 doctrine, certainly is one that is out in front
16 when it comes to our relation. And when - you
17 know, when I look at the situation in Nevada with
18 the BLM, it does appear to be an exemption. It
19 does appear that the Department of Interior somehow
20 is moving beyond the parameters of the legislation
21 and the intent of Congress for the purpose of
22 repatriation. I know I've had the discussion with
23 the National Program that the term repatriation is
24 in the title of the law. It doesn't say retention
25 or control. And so I think in looking at your

1 analysis, it would be important to recognize where
2 that trust responsibility fits with the relation of
3 the United States and tribal governments.

4 SONYA ATALAY: Well, thank you so much for this
5 report. This is really well done, and I appreciate
6 it very much. I particularly like the page that we
7 saw with lots of text, but this is – it's really
8 helpful, and I'm wondering – I guess it seems like
9 you put this together for each of these, right?
10 We'll have this for each?

11 SALLY BUTTS: Yes. I originally when I started
12 this summer had this vision that I wanted to make
13 something very easy to read with a couple of words
14 in each cell, and over the course of the summer I
15 realized that that's an impossible task. The work
16 that you all do is incredibly rich in detail and
17 importance, and it – I don't know of another way to
18 present that information without using a lot of
19 words, and I tried to be concise. And that's very
20 much a summary of the information that's out there
21 on any one of these matters, but it is what it is.
22 It's very complicated information, and it's hard to
23 present in a few words.

24 SONYA ATALAY: Well, I think it's fantastic and
25 incredibly useful. I know this will be a great

1 resource, both for myself and for the public once
2 this report is made public. The – a few kind of
3 quick comments and perhaps you've prepared this and
4 we'll have a chance to comment more later, I know,
5 but I just wanted to say that if – it would be
6 really helpful at least for me if when you have the
7 page where you have kind of the columns that if
8 there's also some kind of – maybe an appendix or
9 something for referring to each of these cases.
10 Because in one sense you said, oh, this was a
11 nuclear site case, then that would be really
12 helpful if I could see what each of these, four or
13 ten or two or one, kind of right below in a just
14 really brief appendix would be very, very helpful
15 that I could hold next to it.

16 SALLY BUTTS: Okay. Those tables were just for
17 presentation purposes, and so those tables are not
18 in my report, but I –

19 SONYA ATALAY: They're very helpful in fact.

20 SALLY BUTTS: I could do something similar to
21 that and provide those in the way that you're
22 talking about.

23 SONYA ATALAY: And the next – my next comment
24 would be I guess for National NAGPRA, which is to
25 say that I know we won't always have a wonderful

1 Sally to do this kind of work, but it would be
2 fantastic if this could be the basis for an online
3 database that could be added to as we have further
4 people to do this sort of analysis and based on
5 what she started then continue it. It would be
6 fantastic and I think incredibly helpful.

7 SHERRY HUTT: And to that I would respond, keep
8 the homework assignments coming and we'll find the
9 students to work with. We supervise them, which I
10 mean obviously there's a limit to how much time we
11 can give in supervising. But the goal is that on
12 the database – on our website, there will be a
13 section of resources. And we already have some
14 reports on there, the report that was done on the
15 CUI and individuals culturally affiliated but not
16 in notices. So we will have a growing number of
17 well-done reports such as Sally's that have been
18 vetted by you all, run through counsel, and
19 therefore deemed that we could put them up on the
20 website. We look for, of course, integrity of
21 research, and non-advocacy, complete data, and a
22 big picture.

23 I think the important piece in this report,
24 and sort of the criticism that was in the GAO
25 report, was to look somewhat myopically at whether

1 or not Review Committee decisions ended up in a
2 notice, and that is too simplistic an analysis.
3 The determinations that you make, the advice that
4 you give, the pieces that emanate from this
5 committee have a wide-ranging impact beyond just
6 saying, did it result in a notice. And that is
7 what Sally found and she called the people to
8 actually follow up on the results and those sorts
9 of pieces. So those are the value added.

10 And so we do appreciate the assignments that
11 you give us because you're asking for data that
12 will allow us to – that asks us to put together
13 meaningful pieces that will help your constituency.
14 And to the extent that this is reflective of that,
15 we're quite proud of Sally's piece, and you will
16 have it in a complete report to look at and – at
17 your leisure, not in the context of a meeting where
18 you have so many things so that you can send your
19 pieces in and your thoughts in and they can all be
20 incorporated as we reach toward the final report
21 that will go on the website. Thank you.

22 SONYA ATALAY: And just my one quick final
23 comment would be, again in reference to the GAO
24 report and things that we've been asking for, which
25 is follow up on trying to understand both where the

1 disputes and dispositions, what the result of those
2 have been, but then also following up on broader
3 issues of trying to see where with Federal agencies
4 and also with museums whether they're repatriating
5 and what those numbers are and following up on
6 those repatriations. I know that was something
7 discussed in the – in the GAO report, and then I
8 think this committee's really concerned with being
9 able to have that data and that information, and
10 this is one really important step. So I say thank
11 you again. It's really helpful and well done.

12 ROSITA WORL: Any further questions? Eric.

13 ERIC HEMENWAY: I'd just like to make a comment
14 and say thank you. I think this will be very
15 beneficial for future Review Committee members to
16 kind of see what other decisions have been made and
17 where the decisions have gone to, and to kind of
18 help them understand kind of the responsibilities
19 they're stepping into and the actions they'll be
20 taking.

21 And just a comment real quick about the number
22 of confirmed reburials, it's really low, but just
23 to let everybody know, once a tribe takes legal
24 ownership of the remains then effectively the
25 National NAGPRA Program, the previous controlling

1 museum or Federal agency are out of the process,
2 and it's at the discretion of the tribe to let, you
3 know, the museum or the National NAGPRA Program if
4 and when the reburials occurred. And so I know
5 that it would be nice to have larger confirmation,
6 but it's at really each tribe's discretion if they
7 want to let anybody know if the reburial occurred
8 and when and where and whatnot, so just a little
9 clarification on that.

10 And I know when we do reburials, I mention it
11 in passing, just like, oh yeah, we reburied the
12 remains from such and such site from this museum or
13 that museum, but it's kind of like in conversation.
14 It's not like we go back and report to the museum
15 or the National NAGPRA Program. So thank you.

16 SALLY BUTTS: Just a clarification on your
17 comment. I appreciate what you had to say and it
18 reminded me to maybe more clearly explain that
19 reburial information. Those four that were listed
20 as reburials, those were actually the agreement
21 between the parties for a reburial and it was not a
22 transfer of control. It was a reburial only. And
23 so that's why that information is in that category.
24 Of the ones that are transfers of control, I don't
25 have reburial information, because you correctly

1 pointed out that is in the purview of the tribes
2 taking control. In a few cases I was able to get
3 some of that information and have that in my
4 database, because that information was provided.
5 And I think in most of those cases, there's just a
6 few of them, they were very public reburials with -
7 one of them was associated with a community event
8 where sort of the whole town was invited to the
9 celebration of the reburial.

10 And so you correctly point out that that is in
11 the purview of the tribes in all of those cases of
12 transfers of control, I don't characterize them as
13 that way. I don't have most of that information on
14 reburials because that's sensitive, private
15 information that the tribes retain. But the ones
16 that are characterized as reburials, those are not
17 transfers of control. Those were just the
18 agreement for reburial. So I hope that helps
19 explain that, but your comments are well-taken.

20 ROSITA WORL: Does the committee have any
21 further questions? If not, thank you very much.

22 Our next agenda item is discussion of dispute
23 procedures. Mervin, would you chair?

24 MERVIN WRIGHT, JR.: Yeah, I'll go ahead and
25 chair this portion of the agenda item.

1 The issues that were raised earlier with
2 regard to recusal – excuse me, Dave.

3 DAVID TARLER: Mr. Chair, if I may request a
4 very short break.

5 MERVIN WRIGHT, JR.: Certainly. Five minutes.

6 DAVID TARLER: Thank you.

7 **BREAK**

8 DAVID TARLER: Mr. Chairman, are we ready to go
9 on to the next agenda item?

10 MERVIN WRIGHT, JR.: Yes, we are.

11 **DISCUSSION: DISPUTE PROCEDURES**

12 MERVIN WRIGHT, JR.: As we talked about
13 earlier, there may be other issues that are going
14 to be raised with regard to the dispute procedures,
15 but I think with what we talked about initially
16 this morning, we could probably continue and then
17 get into some of the specific matters that you all
18 had intended to bring forward with this agenda
19 item, and at least what was brought up earlier was
20 the recusal of Review Committee members from the
21 discussion and how far are we going to go with that
22 recusal and what does that actually mean to us as
23 committee members in recusing ourselves, as well as
24 looking at the equal time factor in enforcing upon
25 the scheduled witnesses that represent a dispute.

1 DAN MONROE: Mr. Chair, I have some suggestions
2 that I would like to put out for discussion. With
3 respect to recusals, I would recommend that any
4 member of the Review Committee who feels he or she
5 should recuse themselves from deliberation on a
6 specific issue should, as a part of that, not
7 discuss – not be involved in subsequent discussion
8 of the issue. I think that that's the best
9 protection for both the individual and for the
10 Review Committee, and I would recommend that we
11 consider that approach.

12 And secondly, I think that when we set time
13 limits for presentations, we need to assure that on
14 one hand we're taking into account fully cultural
15 protocols and on the other that we make certain
16 that those who are making presentations to us
17 adhere to those time limits. And that may require
18 consideration on the part of presenters to the
19 number of presenters who are making presentations.
20 It's obviously extremely difficult for the Review
21 Committee to step in, particularly when we have
22 Elders who are making presentations, and to
23 exercise the kind of discipline that's required.
24 But on the other hand, I think if we had more
25 clear-cut rules up front it would help simplify the

1 process and assure that the protocols that we
2 follow are protocols that guarantee equity to
3 everyone that's involved without in any way showing
4 any disrespect for appropriate cultural protocol.
5 So those are two things I'd like to put on the
6 table for us to discuss.

7 SONYA ATALAY: I want to make a comment,
8 several comments, the first of which is I'd like to
9 kind of divide the two – the issues of recusal.
10 The first issue is, for example, in such a
11 situation, I'll use yesterday's example, although
12 our Chairwoman of this committee was going – was
13 involved in the dispute, I felt – and Eric brought
14 this up earlier, I felt quite capable of making a
15 decision that I didn't feel was tainted at all by
16 her being involved. I thought I could make a fair
17 and balanced decision about that. So I think that
18 we'd be quite capable of doing that in cases where
19 committee members are involved in disputes. That
20 is not – that isn't an issue. So that's one point.

21 The second point I'd like to make is that what
22 happened for me was that I felt quite sure that I
23 could make a fair and balanced decision, although a
24 member of this committee was involved in the
25 dispute, and then – which is why I was asking

1 questions and hadn't recused myself initially. But
2 then through the process of what took place
3 yesterday, I then started to question whether I
4 would be able to do that, and that was particularly
5 because a member of the committee who had recused
6 themselves, our Chairwoman, then did speak.

7 I do — I'm still considering whether I would
8 be able to make a balanced decision in this case,
9 and I feel at this point that I will be able to.
10 But I just — so I guess what I'm just saying is
11 that in reference to Mr. Monroe's comments it's
12 hard to abstain from the discussion when this came
13 up after I'd already participated in the
14 discussion. So that then raises the question of
15 perhaps abstaining rather than recusing oneself,
16 after you've already contributed to the discussion.

17 The next point that I want to make sure to
18 highlight for everyone, and I should have said it
19 earlier in my comments, is that this was a very
20 difficult case, but also I think that there were
21 specific reasons why our Chairwoman from this
22 committee did need to come forward and speak. And
23 that is related to — this isn't just an academic
24 exercise. She's subject to specific cultural
25 protocols that did not allow the other people here

1 to speak or say anything against their clan. And
2 those are specific cultural protocols that need to
3 be followed. So as a member of another clan, it
4 was – she was following her own cultural protocols
5 to come forward and speak, and I understand that
6 and that's what makes this very complicated. So I
7 just wanted to make sure that that was on the
8 record. This isn't a usual circumstance where
9 someone is just coming forward and speaking after
10 they've recused themselves. That there is this
11 issue of the cultural protocols that she's required
12 to follow that complicates the issue. So those are
13 my comments for now.

14 ERIC HEMENWAY: I'd like to make a comment.
15 Kind of echo what Dan and Sonya just said about
16 recognizing the cultural differences and different
17 cultural protocols that these different tribes have
18 to bring forth and recognizing the extreme
19 difficulty that these people had to go through to
20 like bring out their sacred items and present them
21 in public. And I know with my tribe personally
22 that it's a very rare occurrence that it's
23 presented before non-Natives or people outside of
24 our tribe or community. But to do that in public
25 with videotaping going on and whatnot, but it's

1 part of a their presentation.

2 And I think a very powerful part of their
3 presentation was the absence of the other clan hat,
4 and they had the other – the balance was missing.
5 And reading through the material I could get a feel
6 for that, but seeing it made it that much more
7 valid for me. And knowing that yes, they were –
8 and they were sensitive to the time constraints. A
9 couple of the Elders said I know I don't have the
10 time to go into more depth, I know I have limited
11 time, but I have to tell you this. So it's
12 striking a balance between procedures that make
13 sure that everybody has the adequate time to
14 express their opinions, but at the same time
15 recognizing protocols and laws that govern people
16 outside of our own protocols and laws. So I think
17 if we can really sit down and open discussion, we
18 can resolve this issue.

19 MERVIN WRIGHT, JR.: I think – yes, Rosita.

20 ROSITA WORL: Yes, Mr. Chair. I had actually
21 requested that this item be put on as an agenda
22 item, and I raised it for a number of different
23 reasons. And one is that I do believe that we
24 should open this up for consultation or comments
25 from the tribes, museums and scientific

1 organizations. It is a process – I mean we
2 developed the process, and when we developed the
3 process we were trying to really outline for the
4 parties the kind of materials that we thought we
5 needed, because we had instances in which one of
6 the parties did not have all of the information
7 available to us, so we ended up having to defer the
8 dispute until a later time. So that was the intent
9 of the dispute procedures. But I don't think that
10 we really allowed or invited comment on it, and so
11 that's what I would like to propose is that we ask
12 the public to make comment on our dispute
13 procedures, make any recommendations that they
14 might have about the dispute procedures. So that
15 was my first point.

16 The second point has been addressed on the
17 issue of recusal. I think there was, you know,
18 maybe some differences of understanding, and I do
19 appreciate the comments. And so I think it's – I
20 think the discussion is really healthy and I'm
21 hopeful that we'll come out with some
22 recommendations that we all, you know, can – that's
23 known to everyone.

24 And the second one has been addressed in terms
25 of the time constraints, and I think that's been

1 addressed in terms of the differences in
2 presentation styles. I mean, we clearly have those
3 that are able to write and, you know, make their
4 comments in that way very succinctly, directly.
5 And where – and we also have other parties that
6 require or come from an oral tradition with
7 ceremonial activities where, you know, they – that
8 needs to be presented and allowed. And so maybe
9 it's – we say we give equal time in terms but maybe
10 lengthen that time period so that that could be
11 addressed. And if – you know, if they don't use up
12 all of their time that's at their discretion, but
13 then I think if we – if we would then have that
14 equity in terms of time, let's say, instead of an
15 hour we have two hours. So that's one
16 consideration.

17 The next is I think we need to clearly outline
18 in our dispute procedures when the committee would
19 ask the questions and answers, when would we do
20 that? After the presentation or can we have them
21 again – or maybe both times, after the
22 presentations and then when the committee is
23 deliberating? They may find that they have
24 additional questions. But I think we need to
25 outline for the parties when we would do that, so

1 they would have that understanding of when
2 questions might be proposed to them.

3 I think we've also already addressed the issue
4 of having adequate time in the agenda, and
5 Mr. Monroe has made the recommendation that we not
6 have two disputes in one day. And so that might be
7 a consideration that we incorporate into our – into
8 our procedures.

9 The last one, and this is what took me by
10 surprise, is that in this – in the last disputes,
11 the DFO posed a series of questions to the parties,
12 and I – from my, you know, recollection, that was
13 the first time. And for myself, it was – it was
14 disconcerting because it seemed to me that the
15 responsibility of the dispute findings is the
16 responsibility of the Review Committee. And so I
17 felt that the questions were framed. I know our
18 dispute procedures call for the parties to submit,
19 you know, the materials. And so that was my
20 understanding of – that should have been met, you
21 know, with the submission of materials. And so I
22 felt that in this instance the DFO was inserting
23 himself into – into the dispute procedure. So it
24 may be that we have a difference of opinion in
25 understanding, but I think it's something that

1 needs to be addressed.

2 SHERRY HUTT: May I – Madam Chair, may I
3 comment on that on the program behalf because that
4 was done really at my request in terms of the
5 program. If you look at the Review Committee
6 decisions over time, and I think that Sally Butts’
7 research shows this, that there was a good bit of
8 time in the Review Committee meetings trying to
9 determine what the question was and then addressing
10 the question. And that in some of the discussions
11 by the Review Committee and recommendations made,
12 they were somewhat broad based. Some approached
13 that which the parties coming to them needed
14 addressed and some went off in other areas. And if
15 you look at the – where the value of the Review
16 Committee decisions meet the needs of the parties,
17 it’s when the two are joined.

18 And so the idea of phrasing the question was
19 not for the DFO to give his question, but what he
20 does – or she, whoever the DFO is – with the
21 parties in advance is to work with those when
22 they’re submitting their materials in the
23 preparation stage to identify the question that’s
24 being asked so that it helps them focus, not to
25 tell them what their question is but to draw from

1 them so that they could – it's like I would
2 analogize it to someone going to the doctor and
3 saying I hurt, and the doctor has to ask where do
4 you hurt before they can give a prescription. And
5 you give a prescription based on the facts and the
6 questions that you ask.

7 But to present it in that scenario that is a
8 NAGPRA scenario so that when you are looking at –
9 when you're preparing and you're looking at all
10 those materials you can clearly see, head note,
11 this is the issue in dispute or these are the
12 issues, the questions you're being asked to answer.
13 So that when you come in, you go right to the heart
14 of the matter. You're looking at all of the facts
15 and circumstances in your determination and then
16 they meet up. And the hope is that by doing that,
17 there's a higher level of value perceived by those
18 who come to the Review Committee because the
19 questions answered are the ones that they put to
20 it.

21 So if – there's a lot of work that goes into
22 that. It's not easy to frame the issue, but – and
23 so if that's not perceived as a value benefit, and
24 we don't do that, obviously the DFO saves a lot of
25 time with the parties. But that was the intent of

1 that so that you could come in, see where you were
2 going, know what questions you were going to be
3 looking at, and focus. Now, it didn't mean you
4 couldn't make other comments or whatever it is
5 limiting your decision making, but so that you
6 wouldn't need to spend time right up front trying
7 to figure out what we're being asked.

8 DAN MONROE: Madam Chair? I understand the
9 intent, but it would have been, in fact, I think
10 valuable to have some discussion about that new
11 procedure. And secondly, I think it's important to
12 recognize that the Review Committee needs to have
13 the capability to determine for itself what it
14 believes the issues are and the questions to be
15 answered. There may be value in having this kind
16 of procedure in which the DFO specifies issues he
17 or she believes are the core questions. But I
18 think that to carry the process out as it was done
19 in this -- in these two instances tends to a
20 determination in advance about what the core issues
21 and questions are. And while there may be issues
22 of expediency, the fact is, personally at least,
23 I'm much more comfortable wrestling with the whole
24 range of issues that are involved in these kinds of
25 disputes as opposed to having a predetermined cast

1 set of questions that dictate in a way what the DFO
2 perceives the issues to be.

3 SHERRY HUTT: And let me clarify that it's not
4 - this mic just went dead. It's not the DFO's
5 questions but it's the DFO working with the parties
6 who are bringing the matter to the Review Committee
7 to elicit from them what the questions are that
8 they're seeking and put those in a cognizable
9 sentence structure for your benefit. If that's
10 something that you don't want done, then we take
11 your guidance on that.

12 DAN MONROE: I think that there's - there may
13 be value in doing that, but I'm suggesting the
14 means by which that's done and the way in which
15 it's conveyed to the Review Committee, at least,
16 warrants some further discussion in my view.

17 ADRIAN JOHN: And I agree. I think the way the
18 questions as - you know, being the first time I've
19 seen it and I guess it's the first time for
20 everyone else, but I think it's really effective in
21 that way, but I think in some way there has to be
22 more - when you're going to have questions and
23 comments like this that the committee has to be
24 involved in that whole process in defining together
25 what the questions are and in what everyone

1 together feels like their questions are for the
2 whole issue to the dispute. So I agree with that
3 idea that - I like the way that this is laid out.
4 I just think I guess the - from what I hear, and
5 not being involved before, that it seems like the
6 committee should be involved with that process with
7 the DFO and the parties like a preliminary-type
8 thing to work that out.

9 MERVIN WRIGHT, JR.: I found it somewhat
10 helpful. I think when we get into the dispute and
11 I think really what it centered on and what it came
12 down to was the right of possession. Now there are
13 questions that lead to that determination, which I
14 think would involve the committee to raising those
15 questions, not necessarily and perhaps not exactly
16 how the DFO raised those questions. But when I
17 opened the binder and I saw the question it helped
18 me hone in on the issue that was being raised, and
19 I think it brought a better awareness of, you know,
20 the - yesterday when it began, you know, looking at
21 the issue of right of possession, for example, the
22 questions that were posed in the materials it
23 helped. But I think at the same time, you know,
24 how I took the information was more of an
25 assistance rather than thinking that the National

1 Program was trying to control the direction of our
2 discussion. And I think the latitude that we have
3 as a committee is to be able to move beyond that
4 and not feel that the National Program controls the
5 discussion.

6 SONYA ATALAY: The first thing I'd like to say
7 is that I think – well, for me I kind of want to
8 separate the larger issue of considering how
9 procedures will be handled in the future from
10 yesterday's specific questions. And so my question
11 is in terms of what the process for these
12 particular disputes according to the statute, is
13 there anything within the statute that was violated
14 or is there anything within the statute that was an
15 issue with regards to these two disputes and how
16 the questions came forward?

17 Do you understand my question or should I
18 rephrase it? Was – because the DFO framed these
19 questions, is that against what was in the statute?
20 Is there anything in the statute that says that
21 there's an issue with that that we need to consider
22 first? That's my first point.

23 CARLA MATTIX: With the DFO taking that
24 particular action of framing the issues?

25 SONYA ATALAY: Yes.

1 CARLA MATTIX: No, there's nothing in the
2 statute. The statute is very broad, and this has
3 been an evolving process, trying to figure out how
4 to best bring these disputes and make them clear to
5 the Review Committee, the parties, so that
6 everybody's time is well spent. I think some of
7 you may recall in the – some of the past disputes,
8 in the Hawaii dispute, we didn't have this process
9 of trying to frame the issue specifically and
10 allowed the Review Committee, you know, to just
11 figure out what the issues were. And I think
12 there's a lot of use in that, although it did take
13 – just that beginning process took quite a lot of
14 time, and that – those disputes actually did carry
15 over several meetings.

16 And just – you know, there's a competing
17 interest between trying to efficiently use the time
18 but also allow as much consideration as is
19 necessary to really give value to the dispute
20 process. So we're working – we're trying to figure
21 out what works. We did, I think, initiate this
22 type of practice with not just this most recent
23 dispute but two disputes ago with Onondaga, I
24 believe was the first time. It may not have seemed
25 as obvious, but I think that was – there was some

1 direction towards that, and so – and it went ahead
2 this time.

3 But there's nothing in the statute that
4 specifically directs either way. There is, I
5 think, a lot of latitude on how we develop this
6 process.

7 SONYA ATALAY: My follow up on that would be to
8 ask the DFO, David Tarler, if in fact he did work
9 with the – both – all of the parties in the dispute
10 to come up with these questions in the way the
11 process that was outlined, if he could clarify on
12 that.

13 DAVID TARLER: Thank you for the question,
14 Sonya. The first item in your notebooks for the
15 disputes is the letter that the DFO sends to the
16 respondent party after there is a request that the
17 Review Committee convene the parties and make
18 findings of fact and recommendations concerning a
19 dispute. And in that letter, the questions are
20 presented and that letter is also sent to the
21 requesting party as well. And I believe that my
22 letters were sent in early September to the – to
23 both parties framing the issues based on the
24 materials that I received initially from the
25 requesting parties.

1 ROSITA WORL: Mr. Chair, I wouldn't have a
2 problem if the questions were broad and related to
3 each of the standards, you know, outlined in more
4 specific terms, cultural affiliation or, you know,
5 other things like that. But I think that these
6 questions related to the specific case itself, and
7 there were -- in my mind, as I read them, there were
8 determinations and that's what I wanted to avoid.
9 If there's a way that we could -- if we feel like we
10 need to frame questions, number one, the Review
11 Committee does need to be involved. And I don't
12 know if in this case because of the recusal of
13 myself if the Chair was involved in that, and maybe
14 that -- we need to define that more specifically to
15 assure that the committee is involved in this. So
16 I think we need to -- you know, my recommendation is
17 that we have broad questions and maybe we need to
18 define more -- I hate to do it, because they are --
19 it is pretty specific, does require a lot of work,
20 but I think maybe we need to add those questions in
21 the dispute -- the procedures itself.

22 MERVIN WRIGHT, JR.: The purpose of this agenda
23 item was to consider comments on the dispute
24 procedures of the regulation. And with regard to
25 what is in the regulation presently and where we go

1 from here to expand those procedures to define more
2 detailed how we're going to go about conducting
3 dispute resolution, what is the process to open
4 that up, as it was suggested here, to comments and
5 suggestions, either from the committee or from the
6 public?

7 DAVID TARLER: Thank you very much for that
8 question. As you know, this Review Committee
9 operates under a Charter, and the Charter has an
10 expiration date, it's a two-year Charter. It
11 expires every year. It can be renewed. It has
12 been renewed. And the Review Committee cannot
13 operate unless it has a Charter.

14 And in your materials, probably for the second
15 time for all of you, we have provided background
16 materials that include the Charter, the Federal
17 Advisory Committee Act, Meeting Procedures, Dispute
18 Procedures, Findings Procedures. And if you would
19 consult your Charter, there is a provision with
20 respect to administration that I would like to call
21 to your attention as you're discussing this matter.
22 And I'll read it.

23 Under subcommittees, it says, "The committee
24 may, in consultation with the DFO, create
25 subcommittees from among its membership

1 supplemented when appropriate by members of the
2 public, provided that the role of such
3 subcommittees will be solely to gather information
4 or conduct research for the committee, to analyze
5 relevant issues and facts, or to draft proposed
6 position papers for deliberation by the committee.
7 Membership on all subcommittees will be determined
8 by the Chairperson, subject to the concurrence of
9 the DFO. Subcommittees will meet as necessary,
10 subject to the approval of the DFO.

11 So with that information that's contained in
12 the Charter, and I believe that the renewal Charter
13 will also contain this provision, you might
14 consider this provision in the Charter as you're
15 making recommendations and discussing the topic.

16 DAN MONROE: Mr. Chair, I think we all
17 understand and recognize that this is an evolving
18 process and that it's not always possible to
19 anticipate the kinds of issues that may arise.
20 There are certain kinds of procedural issues that I
21 think based on experience in this meeting we may
22 wish to address. Some are larger issues and some
23 are very small. I would suggest, for example, that
24 we establish a rule that you cannot – you cannot
25 answer phone calls in one of these meetings, as a

1 member of the public or as a participant. And if
2 you have a call, take it, go outside. I think that
3 we would also consider at least – at least I would
4 suggest that we consider a procedure by which we
5 disallow, unless we specifically request it,
6 rebuttals to testimony. I think that that's a
7 process which is, in my mind, very difficult to
8 control, and I would personally feel much more
9 comfortable if we had a rule in place which
10 permitted that basically accepted that we not allow
11 that unless a committee member or the Chair
12 specifically asks for it.

13 So those are kind of small rules, and then
14 there's the larger question of how we proceed to
15 generate input from the public, from museums from
16 scientific organizations, from Federal agencies
17 regarding dispute procedures. And I think that we
18 can do that here as a committee, although I think
19 it's worth considering the notion that we establish
20 a subcommittee, which as I understand it, we could
21 do to do research to obtain input and to come back
22 to this committee with some recommendations, which
23 would be in my view likely a much more systematic
24 way to continue to evolve dispute resolution
25 procedures.

1 These dispute resolutions are among the most
2 critical responsibilities of the committee, and
3 obviously we ask and we receive testimony and
4 presentations from parties involved in disputes
5 that involve a tremendous amount of time, energy
6 and expense, and we wish to provide a process which
7 is fair and equitable to everyone and we also
8 understand that that's a process that evolves.

9 So just to conclude I'd suggest those very
10 specific provisions that I mentioned and also the
11 idea at least that we consider establishment of a
12 subcommittee to actually take on this issue in a
13 more broad-based way than we can do here, to come
14 back to the Federal – to the Review Committee with
15 some considerations based on input from museums,
16 Federal agencies, and tribes, as well as carefully
17 considered suggestions from subcommittee members
18 for further evolution of the dispute resolution
19 process, including within that means by which the
20 DFO and the committee can work together to help
21 refine questions and issues that need to be decided
22 as a part of dispute resolution.

23 MERVIN WRIGHT, JR.: Sonya.

24 SONYA ATALAY: So I want to – I do want to
25 comment on what Mr. Monroe said, and I'll come back

1 to those larger issues in just a moment. But just
2 to clarify a follow-up question for this particular
3 – these particular disputes that we've just seen
4 for the DFO, for David Tarler, is: Were there any
5 concerns voiced from either party beforehand
6 regarding the questions and the way that they were
7 framed? So you said that these letters went out to
8 both parties and the questions were there. Was
9 there any discussion or debate about that or an
10 issue that was raised beforehand?

11 DAVID TARLER: The answer is no.

12 SONYA ATALAY: Okay. Thank you for the – I
13 just wanted to clarify that so that we can know
14 that the process – where we're at with this process
15 and these specific disputes.

16 So in terms of the larger questions, I agree
17 completely with my colleague Mr. Monroe. I would
18 add that another item that we might want to add to
19 these lists that we're now compiling about dispute
20 procedures may be something like that no – we will
21 not be able to consider any testimony or data
22 information that was not reviewed beforehand by all
23 parties, that we need to know that the information
24 that we are making decisions upon has been received
25 and reviewed beforehand by all parties in order for

1 it to be fair and equitable.

2 And that I would just ask as a question if
3 there is a subcommittee of this Review Committee
4 that's formed how – what the process would be – I'm
5 curious about this, what the process would be for
6 opening this up for input, as my colleague Ms. Worl
7 has asked, for the public and Federal agencies and
8 museums to have part in this discussion? What
9 would the process be or what might a possible
10 process be for gaining their input on this kind of
11 procedure?

12 STEPHEN SIMPSON: There are a couple of ways
13 that a subcommittee could do that. One is, as
14 David noted, in the Charter, the subcommittee could
15 meet with other parties, with the public certainly,
16 from – to gather advice on its issues, and the
17 Federal Advisory Committee Act allows for that as
18 well. So you – the subcommittee could certainly
19 meet with representatives of tribes or museums or
20 scientific organizations. You want to make that as
21 equal as you can among the various interests
22 involved.

23 The other way is that they could – the
24 subcommittee could in fact work with – probably
25 with the National NAGPRA Program, because we have

1 access to that sort of thing, to publish – to
2 request comment through the Federal Register or
3 through a newspaper, through some other forum. The
4 – we would not – it would not be published as a
5 final rule or as a rulemaking, so there would be no
6 requirement for a, you know, a review and comment
7 on all of the procedures of the APA. You could
8 just, in fact, publish a notice of – here's our
9 procedures, let us know what you think.

10 MERVIN WRIGHT, JR.: The agenda certainly is a
11 major factor in proceeding with our meetings, and
12 in looking at the far left column, you've got a
13 time there for when we call our meetings to order
14 and then when we break for lunch and when we
15 reconvene. Maybe in consultation with the Chair in
16 developing the agenda, these time frames can be
17 placed in there to remind not only the committee
18 but, you know, those that see the agenda that there
19 are time limits that are placed with each agenda
20 item. And I don't know if that had been done in
21 the past in helping to facilitate the meetings and
22 to complete the meeting agenda. Is that something
23 that we're open to do and can it be done?

24 SHERRY HUTT: In the past, we have put times
25 down. For instance, in a dispute because they're

1 to have one hour each we assign them one hour and
2 then the Review Committee adjusts those up or down
3 as we go through. So this time it was more
4 generalized with the idea that the disputes were
5 still one hour each per side.

6 And so we can put times down. We can be more
7 restrictive in the agenda that is discussed between
8 the DFO and the Chair, but through the meeting it's
9 still up to the Chair to keep to those times or
10 change those times as you will during the meeting.
11 So whether or not you want them, they're guides,
12 but you would still need to resolve that as you go
13 through a meeting.

14 MERVIN WRIGHT, JR.: Yes, Rosita.

15 **REVIEW COMMITTEE MOTION**

16 ROSITA WORL: Mr. Chair, I would move that the
17 Chair appoint a subcommittee to work with National
18 NAGPRA to revise the dispute procedures, taking
19 into consideration the issues that have been raised
20 at this meeting; recusal, question and answers, the
21 time constraints, the agenda, the time frame for
22 the providing information to the Review Committee,
23 and other issues that may arise. And that we
24 invite the public to comment on the existing
25 dispute procedures and any recommendations that

1 they might have through our website, through
2 inviting the public to comment in our public
3 comment period, and other avenues that have been
4 outlined by Mr. Simpson.

5 MERVIN WRIGHT, JR.: Okay. That is a motion,
6 as she moves to direct the Chair to establish a
7 subcommittee to address the dispute procedures. So
8 I'll entertain a second.

9 DAN MONROE: Second.

10 MERVIN WRIGHT, JR.: Okay. The motion has been
11 made and seconded. Is there any further discussion
12 on this motion?

13 We'll call for the question. All in favor
14 signify by raising your right hand.

15 [Each Review Committee member raised his/her
16 right hand.]

17 MERVIN WRIGHT, JR.: Those opposed same sign.
18 Abstentions?

19 Motion carries.

20 All right. So in doing so – in hearing the
21 presentation of the Charter language it does state
22 that it does include members of the public or
23 outside of this committee –

24 STEPHEN SIMPSON: It states that you could
25 supplement it when appropriate by members of the

1 public.

2 MERVIN WRIGHT, JR.: Okay.

3 STEPHEN SIMPSON: But I —

4 MERVIN WRIGHT, JR.: So at this time in forming
5 this subcommittee, I guess I'll ask for volunteers
6 from the committee. Does it matter how big this
7 committee is?

8 DAVID TARLER: I would think that as long as
9 it's not the full committee that it's fine.

10 MERVIN WRIGHT, JR.: I'd like to see three
11 members of the committee volunteer.

12 SONYA ATALAY: I'll volunteer.

13 MERVIN WRIGHT, JR.: Let the record show that
14 Sonya Atalay has volunteered.

15 ROSITA WORL: I'll volunteer.

16 MERVIN WRIGHT, JR.: And let the record show
17 that Rosita Worl has volunteered.

18 ERIC HEMENWAY: I'd like to volunteer.

19 MERVIN WRIGHT, JR.: And let the record show
20 that Eric Hemenway has volunteered. And so that
21 will be our subcommittee to address the dispute
22 procedures.

23 And with regard to the larger framework of
24 inviting public comments, I would suggest that
25 Sonya Atalay take the lead in contacting the

1 National Program in formulating the announcements
2 on the website. Does that sound reasonable?

3 DAVID TARLER: It's certainly permitted by the
4 Charter.

5 MERVIN WRIGHT, JR.: Okay.

6 SONYA ATALAY: I'll agree to do that.

7 MERVIN WRIGHT, JR.: And that's how we will
8 proceed then with regard to addressing the dispute
9 procedures.

10 SONYA ATALAY: I have one follow-up question
11 about this issue, if I may.

12 MERVIN WRIGHT, JR.: Okay.

13 SONYA ATALAY: And that is just to ask if there
14 is any reason that the -- legally, I suppose it's a
15 legal question, that the documents that we see as
16 the Review Committee, with regard to disputes
17 specifically but more broadly all of the documents
18 that we have, are those allowable to be seen by the
19 public? And the reason that I'm asking that is
20 because although I've most specifically directed my
21 questions to the questions that were framed within
22 the disputes, I did ask certain questions that I
23 felt needed to be heard by members of the audience
24 because they don't have the benefit of seeing our
25 documents and I want to make sure that they're

1 aware of some of the items that are in there just
2 to have that on the public record that people are
3 able to see. I wouldn't need to ask those
4 questions if the documents were available for the
5 public to see, which is – that's why I'm asking
6 this question to clarify it.

7 STEPHEN SIMPSON: The documents – everything
8 that the committee does is subject to – is public,
9 and all of the – all of the documents that you get
10 are subject to the Federal – the Freedom of
11 Information Act and are public.

12 SONYA ATALAY: So is it possible then or what
13 would be the limitations within National NAGPRA for
14 making those documents available via PDF – well,
15 first of all for us so we don't at least carry
16 those binders around. Maybe some people want the
17 paper. I would prefer PDFs, but is there an
18 expense to that or is there some kind of other
19 limitation that would preclude that – those
20 materials from being made available to the public?
21 And I know this is an issue that is being brought
22 up later today by – after lunch in the presentation
23 by the Columbia Plateau Intertribal Repatriation
24 Group. They've asked for these documents to be
25 made publically available beforehand as well.

1 SHERRY HUTT: And you'd let us know when you
2 want that. As we currently do it, we send out the
3 Review Committee notebooks a month ahead of time so
4 that you have the opportunity to read the materials
5 and be prepared for meetings. So would - you'd
6 want to think about when do you want us to put them
7 up on the website, a week before the meeting, two
8 weeks before the meeting? Certainly not before
9 you've had a chance to look at them. So you'd have
10 to give us some guidance on that.

11 SONYA ATALAY: Right, I - myself I would ask
12 that when they're made available to us they're also
13 made available on the website. That would be
14 useful for me, but that's just my opinion.

15 MERVIN WRIGHT, JR.: Okay. I think we're
16 completed the discussion here regarding the dispute
17 procedures on the agenda. And I'd like to move on
18 to the next items and turn the agenda back over to
19 Madam Chair, Ms. Worl.

20 ROSITA WORL: Thank you, Mr. Chair.

21 Now we'll have the National NAGPRA Program
22 reports.

23 **NATIONAL NAGPRA PROGRAM REPORTS**

24 **SHERRY HUTT**

25 SHERRY HUTT: Right. Thank you, Madam Chair.

1 We have several people from the program who will be
2 presenting to you, and so I want the time to be
3 used for their presentation, rather than one that I
4 will give you, but on – you had, prior to this
5 meeting, you had the annual report given to you
6 electronically and then you have it today. So I
7 would then reserve time to answer any questions you
8 have on the report, but before we do that, there
9 are a couple of things of note that I want to make
10 sure that we go through. And some of the things,
11 just to give you a head note, Mariah Soriano will
12 go first, and the document that she will be
13 referring to is the one that she's putting up right
14 now, and this is the culturally affiliated and
15 culturally unidentifiable statistics, these are
16 individuals, for Federal agencies, and the – and
17 we'll go through that as part of the report.
18 Another matter is Richard Waldbauer has for you the
19 – actually, are we doing the consultation as a
20 different agenda item or this agenda item? Is that
21 part of this agenda item, the 10.7 consultation?

22 RICHARD WALDBAUER: That's part of this item.

23 SHERRY HUTT: That's part of this item. So as
24 part – if that's as part of this item on the
25 agenda, then Richard Waldbauer will take you

1 through 10.7, that's the regulation on disposition,
2 the reserved regulation on disposition of unclaimed
3 on the Federal lands that we hoped to move forward
4 into a proposed rule this spring, and we've
5 consulted with you on that before several times.
6 You have the disk on that. So Richard is here to
7 present the most recent results from his
8 development committee.

9 And then we have some new developments in the
10 area of civil penalties that Bob Palmer will talk
11 about, and the grants and the notices then after
12 that. Those are more informational pieces that we
13 have in the report and documents in the report as
14 well and numbers in the report as well, and
15 certainly the training piece.

16 I would say for those of you who are new to
17 the committee in the last couple of years, when I
18 first started with National NAGPRA the committee
19 really looked at not just the content of the report
20 but what we were reporting in the report. Most
21 specifically the committee, the Review Committee
22 was concerned that there were numbers given every
23 year in the aggregate, so it didn't tell the
24 incremental. In other words, it didn't tell what
25 we had done in the last year. And you have made

1 really substantive recommendations over the years
2 in terms of just what's in this report and how it's
3 presented. So I would hope that when you look at
4 that and you give us your guidance today that you
5 will look both at the content and the way in which
6 we present data and what you would want to see or
7 different ways of presenting the data. If we don't
8 get through with that today, certainly – and before
9 the end of the next year when we do the next
10 report, I certainly would like any edits or input
11 on that.

12 If we could move to the Federal agency
13 statistics and turn you over to Mariah Soriano,
14 Mariah, by the way, this year has launched four new
15 databases just within this year. And I'd first ask
16 her to give you an update on the databases, the
17 website, and then we'll go into these Federal
18 agency statistics.

19 **MARIAH SORIANO**

20 MARIAH SORIANO: Good morning. My name is
21 Mariah Soriano, and my position with the National
22 NAGPRA Program is the Database and Web Coordinator.
23 To summarize this program area's accomplishments
24 for Fiscal Year 2010, prior to the reporting
25 period, the National NAGPRA Program had four online

1 databases. In Fiscal Year 2010, three new
2 databases were completed and made available on the
3 website. Those three are as follows: the
4 Culturally Affiliated Inventories Database, the
5 Summaries Database, and the Notices of Intended
6 Disposition Database.

7 The Cultural Affiliated Database project began
8 in Fiscal Year 2009 and was completed in July with
9 one FTE and the assistance of two NCPE interns.
10 The culturally affiliated NAGPRA paper file
11 inventories of museums and Federal agencies were
12 entered into the database; however the database is
13 not meant to be an exact copy of a museum's or
14 Federal agency's inventory. And all individuals on
15 the database should be represented in a Notice of
16 Inventory Completion. Any corrections, updates and
17 additions to the database will be made as museums
18 and agencies continue to verify the data that have
19 been entered or submit revised inventories to the
20 National NAGPRA Program.

21 The Summaries Database project began in Fiscal
22 Year 2010 and was completed in the summer in
23 August. This database provides the name of the
24 tribes receiving a copy of the summary from the
25 museum or Federal agency.

1 And lastly, the Notices of Intended
2 Disposition Database completes the disclosure and
3 public access of the NAGPRA compliance documents
4 for public use with new discovery information. The
5 Federal agency officials send copies of published
6 Notices of Intended Disposition to the National
7 NAGPRA Program, and this information is entered in
8 the database.

9 The goals for Fiscal Year 2011 is to continue
10 to enter additions, amendments, and corrections –
11 such as reconciliation of records to notices,
12 published notices, or culturally unidentifiable
13 subsequently culturally affiliated to inventories –
14 to the databases including digitizing the paper
15 inventories into an electronic repository. In
16 addition, we'll begin the first phase of the NAGPRA
17 inventories web interface project. This will
18 entail a change in platform and rewriting codes, so
19 that's phase one. And phase two, to begin in
20 Fiscal Year 2012, consists of application
21 development, developing a user guide, and piloting
22 the system. The purpose of the project is to
23 provide museums and Federal agency NAGPRA
24 representatives direct access with an account
25 through a log-in and password to their NAGPRA

1 inventories, which will continue to be administered
2 by the National NAGPRA Program.

3 This segues into what Sherry had mentioned
4 earlier about the Federal agency repatriation data.
5 This is a – what we have presented is a draft
6 template of the data itself and, upon review by the
7 Review Committee, making recommendations as to how
8 you would like to see the data reported.

9 SHERRY HUTT: And let me, if I might comment,
10 before you actually take them through the data,
11 this report responds to GAO recommendation number
12 5, in which the GAO recommended that the Federal
13 agencies submit their repatriation data to National
14 NAGPRA and that we report that data. The Secretary
15 of the Interior has given us – has responded to the
16 GAO that for FY11, that is the year that we're in
17 now, that our next year's report will have Federal
18 agency repatriation data in there. So what we're
19 doing now, at the conclusion of the prior fiscal
20 year, is giving you a prototype of what that report
21 may look like. So we're moving to that task so
22 that we get it completed timely for FY11.

23 And to do this the Federal agencies were
24 consulted on this in their data and this document
25 that you have has been submitted to them. We don't

1 want to suggest that this is final data for each of
2 them, and that's why you have all these little
3 footnotes at the bottom that say it's based on our
4 records or GAO data or certain data from Federal
5 agencies. But this is a format that we're moving
6 toward that may be amended in consultation with the
7 Federal agencies as to how this data would be
8 represented. But that's what this is; this is part
9 of the GAO recommendations. In the next annual
10 report it would be part of the report. This year
11 it's a separate document. It won't necessarily go
12 up on the website like our annual report would, and
13 that's why we've kept it separate.

14 So Mariah, do you want to take us through what
15 we have in this - do you all have the datasheet,
16 the single sheet? Okay.

17 MARIAH SORIANO: For this particular
18 spreadsheet, we have a number of columns and what's
19 represented are the Federal agencies, and all of
20 this data, please let me footnote going through,
21 beginning with the Environmental Protection Agency
22 down to the Department of Justice, are in our
23 electronic databases. Okay, so that's where the
24 data is culled from, in addition to what was
25 provided by the GAO as submitted by agencies

1 through a notice-by-notice dataset, and in addition
2 any data, to the extent that information exists,
3 that agencies provided in response to a mini
4 informal data call to the National NAGPRA Program.
5 And the data sets were cross referenced with one
6 another as of September 30, 2010, so some of the
7 data you may have seen in the GAO report that was
8 the previous year, and so these numbers are brought
9 up to the present. And they were only collected on
10 human remains, not on any AFOs that may have
11 accompanied them, and the presence or absence of
12 AFOs will be addressed, as Sherry mentioned, in
13 formal reporting for 2011, once a data collection
14 procedure has been established.

15 So for column A, that is the culturally
16 affiliated data that we have in our database, which
17 includes those that are CUI as amended as having
18 cultural affiliation and those that were submitted
19 as culturally affiliated. In column B, we have a
20 CA in NICs, which is culturally affiliated in
21 notices, and that also is generated from our
22 database. Column C are the minimum number of
23 individuals that are culturally unidentifiable.
24 Column D is a result of column C, which is the CUI,
25 in Notice of Inventory Completions through a

1 disposition agreement. Column E is the sum –
2 excuse me, column F is the sum of those that are
3 culturally affiliated and culturally
4 unidentifiable, and that is generated from our
5 database as well. And in column G is the GAO data
6 that was self-reported and through a survey, and
7 also the readily available data provided to the
8 National NAGPRA Program. Column H is the
9 difference of the total MNI and the total
10 repatriated, which leaves us to whatever is
11 remaining in the collection, so we took the
12 difference between the MNI and the total
13 repatriated.

14 SHERRY HUTT: To take you through sort of what
15 these bottom line numbers – you know, the Review
16 Committee has asked questions about Federal agency
17 compliance over the years. And in some ways you
18 might say they're doing very well, but in terms of
19 your analysis and looking at this and things that
20 you comment in your annual reports, we hope that
21 this data is helpful to you. If for instance you
22 look at – and just looking across the bottom here –
23 the number of culturally affiliated and the number
24 in notices, certainly the Federal agencies are
25 working toward those numbers equaling each other.

1 So what you know then each year when you see this
2 report is the sort of – somewhat of a deficiency,
3 how many culturally affiliated have been determined
4 but not yet in notices. Remember, we had a report
5 on that, we had – the problem was where's the data,
6 so here's the data, the difference between the
7 16,832 and the 14,756. And keep in mind we're
8 continually checking the data, adding to the data,
9 and auditing the data to give you the most accurate
10 numbers at any time. But that then gives you an
11 idea because the agencies are headed for a hundred
12 percent in those two.

13 The next in the unidentifiable, you'll see a
14 very small number of those CUI that are in notices.
15 Keep in mind that the CUI rule just went into
16 effect this spring. And so the only ones that are
17 in the column D would be those that came to the
18 Review Committee for special permission, whereas
19 now the regulation allows for some to move forward.
20 So you would – you would look to see then whether
21 the number in D is increasing and at what rate that
22 might be increasing, and that might be somewhat of
23 interest to you all going forward. And then you
24 have the total number, and you'll see that the
25 total number for all Federal agencies is 31,000 out

1 of a total of maybe 180,000 that we have accounted
2 for in our records, so Federal agencies account for
3 one-sixth of the total of all human remains. But
4 this at least as a prototype gives you an idea of
5 that population, and the total that are in notices
6 total of about 50 percent. But again, that total
7 includes the unidentifiable with the culturally
8 affiliated. So you can't really say that the
9 Federal agencies are only 50 percent in compliance,
10 because they've just received the guidance, the
11 rule that allows them to put all the CUIs in
12 notices.

13 And then as you look toward columns G and H,
14 you would probably be looking for the number in G
15 to be increasing as the number in H is diminishing,
16 and that will give you an idea, a global picture,
17 for all the Federal agencies of how NAGPRA is
18 progressing. So we hope that this is what this
19 illuminates for you and any ways that you think
20 this can be improved, of course, that would be
21 helpful to hear.

22 ROSITA WORL: Do we have any questions?

23 **REVIEW COMMITTEE QUESTIONS AND COMMENTS**

24 SONYA ATALAY: I have a comment. First, thank
25 you very much for the report. It's very useful. I

1 just would like to say maybe one thing to add would
2 be a further column after column H that would be a
3 percentage that's remaining in the collection. So
4 since we're talking about percents, it would be
5 just helpful visually to see what percent has been,
6 as we're hoping to see the G column go up and H go
7 down, have that percentage there.

8 MARIAH SORIANO: Thank you.

9 ROSITA WORL: Alan.

10 ALAN GOODMAN: Just a quick math question
11 following off of that, on column H, the first three
12 rows, I believe, EPA down to the TVA, I believe
13 column H should be the same as column E, should it
14 not?

15 SHERRY HUTT: Yes.

16 MARIAH SORIANO: Yes, that's correct.

17 ALAN GOODMAN: And I think you're - my quick
18 guess is that your actual sums are correct, but -
19 thank you.

20 ROSITA WORL: Any further questions? I have -
21 do we not have Federal agencies that have cultural
22 items in museums?

23 SHERRY HUTT: Are there Federal agencies -

24 ROSITA WORL: And how are they counted?

25 SHERRY HUTT: The - it's based on who is

1 controlling them, so if they are in non-Federal
2 repositories, it's still part of the Federal
3 collection.

4 ROSITA WORL: So it is – that number is
5 included here?

6 SHERRY HUTT: Yes, it should be. Now, you'll
7 see adjustments in these numbers over the years as
8 the Federal agencies strive to assess where all
9 their collections are. Some of them have better
10 centralized control over their collections than
11 others. So these numbers will move over time, and
12 you could compare perhaps year to year, see how
13 things are going.

14 SONYA ATALAY: Following up on that question,
15 if I understood the GAO report correctly, there was
16 some confusion by Federal – some Federal agencies
17 as to whether they did need to include remains and
18 cultural items that were in – currently stored in
19 museums, and so I'm wondering, I guess the question
20 would be do we know for sure that in fact these are
21 all of the materials or is that confusion – has
22 that confusion been resolved.

23 SHERRY HUTT: The – what you're really talking
24 about is auditing to make sure that everything that
25 is reported is the population that should be

1 reported? Is that what you're saying?

2 SONYA ATALAY: Well, I just -- from reading the
3 GAO report I guess there was some question raised
4 in that report about whether all the remains are,
5 in fact, included here. I'm not specifically
6 saying auditing, but I guess I'm just saying are we
7 definitive that, yes, in fact, these are all the
8 remains; that, in fact, all the Federal agencies
9 did include remains that were held by museums in
10 these counts.

11 SHERRY HUTT: That was -- first of all the
12 National NAGPRA Program has no means to audit. We
13 receive the data which is given. So our obligation
14 is to keep good care of the data with which we're
15 given. So whether or not there are collections
16 that are not reported, we would have no knowledge
17 of that. The GAO went out and did some of that in
18 terms of discussion with the Federal agencies, and
19 there were also GAO recommendations 1 and 2; one
20 was that the Federal agencies develop a timeline to
21 have all of their culturally affiliated in notices
22 and another was to develop a plan for how they were
23 going to address all their NAGPRA obligations. So
24 those were parts of the GAO recommendation that had
25 to do with all Federal agencies to move that part

1 along.

2 ROSITA WORL: Okay. Let's move on to the next
3 report.

4 SHERRY HUTT: Okay. I'll turn it over – thank
5 you, Mariah. We'll turn it over to Richard
6 Waldbauer, and if you would look in your notebooks
7 behind tab 11, you will see the – a summary of the
8 proposed rule 10.7, and I will turn it over to
9 Richard to discuss that progress with you.

10 **RICHARD WALDBAUER**

11 RICHARD WALDBAUER: Good morning, and I'm very
12 pleased to have the opportunity to present to you
13 about the reserved rule 10.7, and particularly
14 because this is – we feel that we're ready to
15 proceed with producing the text for the proposed
16 rule, and that this would be the appropriate last
17 step before we get underway – the last step in
18 consultation before we get underway with that
19 direct process. What I'd like to do is describe
20 what this summary is and how you can use it or
21 hopefully how you have used it, and then I'll be
22 pleased to answer questions directly. We could go
23 straight to questions, or I could go into a short
24 description of what's there, given the time that we
25 have and answer your questions as part of that, so

1 whatever you choose would be just fine.

2 ROSITA WORL: I think given the fact that we
3 don't know that the public has seen this, I think
4 the recommendation you made this morning was very
5 good. Why don't we have a brief overview.

6 RICHARD WALDBAUER: Okay. Thank you. The
7 summary does three things. First, it provides you
8 with a comprehensive picture of what the proposed
9 rule should contain. So it has kind of the look of
10 the proposed rule itself but that's really to give
11 you an idea of the contents and the items that
12 should be in there, things like the summary,
13 supplementary information, the section-by-section
14 analysis, etcetera. Secondly, it represents a
15 collation of all of the consultation that has taken
16 place and summarizes some of the results.
17 Consultation on the reserved 10.7 rule began in
18 2005, and there were a number of specific events
19 for consultation, as well as presentations at the
20 Review Committee and discussions during the Review
21 Committee meetings. And then thirdly, there has
22 been such an extensive record made and such an
23 opportunity to see the variety of things that
24 people want to consider that there's even potential
25 language contained in all of that consultation.

1 And so in the section-by-section analysis what you
2 see there that reads more or less like the proposed
3 rule, that really represents language that we found
4 in many, many different places and we feel
5 confident that could be used in the proposed rule
6 itself. So we tried – the particular format that
7 you have here hopefully accomplishes all three of
8 those purposes and gives you a good idea about what
9 the rules should be and what it will look like once
10 we start crafting the text for the proposed rule.

11 So with that it starts off with a summary.
12 That's a fairly straightforward description there.
13 Oh, I should say as well, we've had a chance to
14 have a working group of Federal agencies examine
15 the – this summary and give us some ideas about the
16 specifics that would help them dealing with
17 developing procedures for carrying out the 10.7
18 process, and so some of the language that they're
19 interested in as officialdom, if you will, appears
20 in the summary and the authority, etcetera,
21 etcetera.

22 So the authority states where the 10.7 rule
23 comes from and the other components that will help
24 inform the language in the unclaimed rule,
25 particularly with regard to proper curation. All

1 parties in the consultation were particularly
2 concerned about curation, whether it be the long-
3 term care or specific procedures that should be
4 adopted for human remains and associated funerary
5 objects.

6 The background shows you the range of
7 consultation events that have – that took place,
8 and we have a complete transcript of all of those.
9 So when the proposed rule is published, that
10 preamble will contain – so the description of all
11 of those events and what transpired during those
12 events. And you see three categories there, formal
13 meetings, summary of the consultation with the
14 Review Committee, and then summary of
15 recommendations received during the consultation.
16 That third part is illustrative of the essential
17 components of all of that consultation that always
18 seem to be present. So for instance, people were
19 always talking about preservation management,
20 people were always talking about the treatment of
21 cultural items pending disposition, and thirdly,
22 treatment of Native American archival materials as
23 well. So there will be a full text describing all
24 of that.

25 Then the second section under the background

1 is the recommendations of the Review Committee, and
2 this is a distillation of the thoughts that you all
3 have provided at the various meetings. Basically
4 around these four issues of documentation,
5 disposition, list of unclaimed items and treatment,
6 and then a little bit of a description of what
7 those kinds of comments tended to be. So we think
8 we will provide a useful summary of your
9 deliberations as part of the proposed rule so that
10 people have a chance to see the full extent of the
11 opinions that you all have provided as well.

12 Now the last bit is the section by section –
13 first of all, I'd like – are there any questions
14 about that up to that point?

15 The last part is the section-by-section
16 analysis, and as you can see we don't have the
17 proposed language itself, that we're – we would
18 like to move into developing. We're still – still
19 consulting essentially. But the section-by-section
20 analysis gives you the extent to which we think the
21 critical components will be there. First of all,
22 there would be a definition of unclaimed, and this
23 little description was one of the areas in which
24 consultation demonstrated pretty clearly the kinds
25 of language that should be there. So this is

1 pretty well reflective of what might eventually
2 appear in the proposed rule. Then – and that would
3 appear in Section 10.2 of the rules under paragraph
4 (h), a new paragraph (h).

5 Section 10.7 is the – is the reserved rule
6 itself, and it would contain four components.
7 First of all, a general description which
8 emphasizes that – and this was important for all of
9 the interested parties – tribes, museums and
10 scientific organizations, Federal agencies. It
11 emphasizes that all of the work done under Sections
12 10.3 through 10.6 of the regulations were
13 preparatory. That is, nothing – there was no need
14 to go over any of that. There is no need to
15 generate anything new, that this – if you get to
16 the point where you have unclaimed, that's simply
17 further on in the process, in the stages, that
18 nothing needs to be redone. You've already done –
19 if you've done that work and you still are in the
20 position of having unclaimed, then there are –
21 these procedures will go beyond that.

22 (b) is about disposition expressly being
23 contingent upon having completed all of that
24 documentation. So there's the general statement,
25 and then a clear statement about the disposition

1 itself. And (b) (2) emphasizes the priority
2 potential claimants and how transfer of control to
3 nonfederally recognized groups could be
4 accomplished, and that reinterment is an important
5 alternative in this process.

6 Then the third part of disposition is the
7 public notification about that disposition. The
8 third major component of the reserved rule is the
9 care for unclaimed items pending disposition. And
10 one of the most important things that people wanted
11 to emphasize, and again this was across the range
12 of interested parties, that human remains and
13 funerary objects may in fact be treated with
14 specific sensitivity to Native American traditions,
15 including being stored separately, so all sorts of
16 alternatives with 36 C.F.R. Part 79, the curation
17 rules being a base for proper care, but all sorts
18 of alternatives can be – can and should be
19 considered along those lines.

20 And that agencies should submit lists of
21 unclaimed remains to the National Program for
22 public information access within two years. We
23 discovered as well that all parties were interested
24 – they weren't interested in time limits for
25 addressing unclaimed altogether but there should be

1 time limits about the declaration of unclaimed such
2 that everyone would be clear about the status and
3 that – but that the opportunity to address
4 unclaimed remains would never be short-circuited.

5 And then finally the opportunity to bring
6 matters relating to unclaimed to the Review
7 Committee itself.

8 ROSITA WORL: Questions?

9 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

10 SONYA ATALAY: I have a quick question, in
11 reference to Section 10.7(b)(2), specifically the
12 reinterment segment. I know here under (b)(2)
13 you're saying that if the identified priority
14 potential claimants in paragraph (b)(1) of this
15 section have chosen not to exercise their right or
16 no potential claimants have been identified, a
17 Federal agency may – my first question is that also
18 or may that also include museums as well?

19 RICHARD WALDBAUER: Well, to the extent that
20 the excavations or discoveries were made after – by
21 Federal agencies on Federal land or Indian lands
22 after November 16, 1990, that's the application.
23 With regard to museum collections generally, that's
24 another matter that's apart from this reserved
25 rule, so –

1 SONYA ATALAY: And with regard to part (b) of
2 that where we're talking about reinter, I just
3 wonder if you could speak briefly about that, where
4 those – the comments specifically about reinterment
5 came from? Were those found – I don't know if
6 you'll know specifically where those were – where
7 those comments came from and how that was
8 developed.

9 RICHARD WALDBAUER: They came from both Indian
10 organizations and Federal agencies. The Federal
11 agencies that discussed it tended to have
12 reinterment programs underway for their work and
13 government-to-government relationships with Indian
14 tribes already. They had already come up with some
15 locations for reinterment or procedures for
16 reinterment or procedures about notifications, and
17 they wanted to see to it that that – those types of
18 relationships were extended properly. And so the
19 option – they sought to see that the option was
20 made available. Indian organizations tended to
21 speak to it about concern that things just not be
22 left – just because they were unclaimed, that some
23 kind of action could be taken so that there would
24 not be this open-ended residence of people in
25 collections. And that if somehow – and if – and

1 that reinterment was a preferred option in those
2 kinds of situations. Let's do something about
3 this. Let's not just leave it open-ended.

4 SHERRY HUTT: And also to carry on, if I might,
5 you might not be as familiar with some of this as
6 other things that we've talked about because as, of
7 course, NAGPRA is bifacial. So you have the
8 collections matters, which come before this
9 committee, and then you have the new finds on the
10 land, which do not come before this committee. You
11 don't hear disputes on that. All of those sorts of
12 things that apply to collections do not apply on
13 the land. The only part of that that does apply is
14 the consultation with the Review Committee on any
15 new regulations. And that's why this regulation is
16 before you.

17 And for your leisure, as though you would have
18 leisure, but for you – there is a disk – there's
19 two disks in your notebook, your smaller – one is
20 your background material for the Review Committee
21 and the other is a disk that was – a searchable
22 disk for you on 10.7, on this rule, and on all the
23 various consultations that have occurred over the
24 years that feed into what Richard is now telling
25 you from the tribes, from the scientific and museum

1 organizations.

2 ROSITA WORL: Let's move on. It's now 11:45
3 and —

4 SHERRY HUTT: Yes. These will be brief but
5 very important. I'd like to turn now to Bob
6 Palmer, who you have heard from before, our Civil
7 Penalties Investigator.

8 **BOB PALMER**

9 BOB PALMER: Good morning, and it's nice to see
10 all of you again and welcome to the newest members
11 of the committee. I would like to just speak with
12 you briefly on civil penalties, and you should be
13 able to find this in your notebook and I'll move
14 through this as quickly as possible. But just by
15 way of background for anyone that's not familiar
16 that might be in the audience, the civil penalties
17 rule was established as an interim rule in 1997 and
18 as a final rule in 2003. In May 2005, through a
19 Secretarial Order, the Secretary of the Interior
20 gave the National NAGPRA Program the responsibility
21 of providing staff to the Secretary's designee on
22 civil penalties, the Assistant Secretary for Fish
23 and Wildlife and Parks. The civil penalties
24 investigative function is housed within the
25 National Park Service's Law Enforcement Security

1 and Emergency Services Branch, and I've been
2 carrying out these penalty investigations since
3 late 2005. And I have been employed at Effigy
4 Mounds National Monument and doing this as a
5 collateral duty.

6 In 2010, there were 18 counts of alleged
7 failure to comply made against 9 museums that were
8 investigated. The investigations yielded
9 determinations of failure to comply on 3 counts and
10 determinations that the allegations were
11 unsubstantiated on 15 counts. The three – the
12 three substantiated counts of failure to comply
13 were comprised of one count of failure to complete
14 a summary and two counts of failure to complete an
15 inventory. Just for the record, there were a
16 number of other cases that were under investigation
17 this current year that just – we were not able to
18 conclude, but some of those are fairly significant
19 looking into the future. In the 2010 financial
20 year, 13 individual written allegations were made
21 against 11 different museums, and by the end of the
22 year I had managed to investigate 1 of those
23 allegations that had 1 count against a museum.

24 So just to summarize overall from 2006 to
25 2010, we've investigated 31 allegations of failure

1 to comply made against 27 museums, and that's
2 yielded a determination of failure to comply on 21
3 counts involving 14 museums and a determination
4 that the allegation was unsubstantiated on 145
5 counts. Thus, through 2010, the percentage of
6 investigated museums that have been determined to
7 have failed to comply with the requirements of
8 NAGPRA is 52 percent. In other words, more than
9 half of the allegations that we receive with
10 respect to museums, more than half the time the
11 museum has failed to comply. But quite often we
12 receive a lot of allegations, a lot of allegations
13 specific to different types of activities, and only
14 about 13 percent of the time are the actual
15 allegations substantiated. So just to summarize
16 you might have four allegations made against one
17 institution and only one of those allegations is
18 found to have been substantiated, the other three
19 aren't for what is always a variety of reasons.

20 Now, with respect to collecting penalties, to
21 date 10 notices of penalty assessments involving 9
22 museums have been issued by the Assistant
23 Secretary. As of the end of financial year 2010,
24 \$35,990 in penalties have been paid by 6 museums,
25 and there's another \$6,689.44 outstanding currently

1 in which the 45 days have not run. And just, the
2 final point on this is we've only had one museum to
3 date, of all that we've investigated, only one has
4 requested a hearing, and we were able to resolve
5 that successfully without it going to a hearing, so
6 we were able to conclude that matter.

7 And as some of you would be aware, I have over
8 the past five years been doing this on what's
9 essentially an ad hoc basis, and I work for a
10 National Park, which up until recently didn't have
11 the funds to fund my position on a full-time basis.
12 This current financial year they've come up with
13 the funding and so my tenure at doing civil
14 penalties at this point is unresolved going
15 forward. So this may be the final time that I
16 appear before you, but I would just like to thank
17 you all for your interest in this because I can
18 honestly say this has been a career highlight for
19 me because it feels to me as though this is one
20 thing that I've done in my career that I really
21 feel has made a difference for a lot of people and
22 it is something of great substance and I very much
23 appreciate the opportunity to have had the
24 opportunity to serve you and to serve museums and
25 American Indian communities and the American

1 public. And thank you very much.

2 ROSITA WORL: Thank you very much.

3 Do we have any questions? Eric.

4 **REVIEW COMMITTEE QUESTIONS AND COMMENTS**

5 ERIC HEMENWAY: I'd like to make, excuse me, a
6 comment that in preparing last year's report to
7 Congress I suggested that funds be allocated to a
8 position of Mr. Palmer's nature that somebody could
9 carry out this work, because a lot of times tribes
10 feel they have these – they can assess these
11 penalties, they have a complaint with a museum, but
12 taking the next step has always been a difficult
13 task. But now seeing that this – there isn't a
14 body to carry this out may prove to be more of a
15 difficulty for tribes and kind of sway them from
16 not even pursuing this because there's nobody there
17 to carry out the work. So this is a concern from
18 Indian country that you have the law saying this,
19 there's penalties that can be levied against the
20 museum, but in same instance, there's nobody to
21 enforce that. So I would just like to make that
22 comment for the record. Thank you.

23 ROSITA WORL: Any further comments? Okay.

24 Let's move on, Sherry.

25 SHERRY HUTT: In the interests of time, you

1 have on page 3 of the report, that summary, the
2 recap of all the statistics, and Sangita Chari is
3 here who does our – who is our Grants Coordinator
4 and also Public Outreach and she has actually some
5 exciting things that have gone on in the last year,
6 and Jaime Lavallee who once again had a banner year
7 in the publication of notices, notices of course
8 reflecting the work of all the museums and agencies
9 together with tribes to bring together decisions
10 and move NAGPRA forward. So if you have questions
11 for them, and if we're out of time going into the
12 noon hour, if you want to defer some of this to the
13 afternoon that might be lighter, we could do that
14 too, whatever is your pleasure.

15 ROSITA WORL: I think let's carry on.

16 SHERRY HUTT: Okay. I'll turn it over to
17 Jaime.

18 **JAIME LAVALLEE**

19 JAIME LAVALLEE: Good morning, Jaime Lavallee,
20 I'm from the Muskeg Lake Cree Nation. I'm also a
21 NCSHPO contractor filling the notices role. As
22 Sherry mentioned earlier, there are two sides to
23 NAGPRA. One is the inadvertent discoveries and
24 excavations, and those are Notices of Intended
25 Disposition. I'm just going to go through this

1 fairly quickly because you can – all the numbers
2 are there. I'm just putting this up so that way
3 the public can see it as well. Totally – the total
4 number of Notices of Intended Disposition are 105
5 notices, which represent, underneath, a thousand
6 individuals. As you can see, the database is now
7 available, if anybody goes up there, it's right
8 there.

9 My primary focus has been on Federal Register
10 notices, which are the Notices of – Notices of
11 Inventory Completion and the Notices of Intent to
12 Repatriate. As Sherry mentioned, there were 152
13 total that were published this year, so that's 109
14 Notices of Inventory Completion, which are for
15 roughly 1,600 individuals and 9,000 associated
16 funerary objects, which bring us up to a little bit
17 over 1,400 that have been published throughout the
18 time and a little over 40,000 individuals and over
19 one million associated funerary objects.

20 The Notices of Intent to Repatriate, there
21 have been 520 that have been published in total.
22 The numbers are right behind you. There is about
23 100,000 – 150,000 unassociated funerary objects, a
24 little over 4,000 sacred objects, objects of
25 cultural patrimony and objects that are both sacred

1 and cultural patrimony, and 292 undesignated
2 cultural items, which there were none of those
3 published this year.

4 I think that's about it. As you can see we've
5 got a steady rise in notices that are being
6 received, as well as notices that were published,
7 although this year wasn't quite at the 200 number
8 that I reached last year, there were still about
9 152. And I've been receiving a lot of 10.11 ones
10 recently, and I'm talking like small numbers of
11 individuals necessarily inside the 10.11 ones, but
12 large number of tribes that have the potential for
13 the disposition. So if anybody has any questions?

14 ROSITA WORL: I think that is the record in
15 terms of a report. Any questions?

16 Great work. Thank you very much.

17 Our final report?

18 SHERRY HUTT: Yes, Sangita Chari, Grants and
19 Public Outreach.

20 **SANGITA CHARI**

21 SANGITA CHARI: I'll try to beat Jaime. In
22 FY10, we had 3.1 million dollars came in in
23 requests, which was a total of 57 grant
24 applications. Of that, we had 1.75 million to give
25 away, which was 24 consultation/documentation

1 grants and 12 repatriation grants. We had our
2 pretty standard split, about two-thirds of all
3 grants went to tribes, one-third went to museums.

4 And other details are in your report so I
5 won't go into them, but I did want to tell you that
6 two other things that were – that happened in FY10
7 but are impacting FY11, the GAO, as well as the
8 Grants Review Panel, and the public has always had
9 concerns with the way that Federal agencies are
10 discussed in the guidelines and confusion about
11 whether funding is and isn't available. I think I
12 did a pretty good job, I hope, of making it very
13 clear in FY11 that funding for
14 consultation/documentation grants that to do work
15 with Federal agencies is not allowed. However, we
16 are now going to allow tribes to do repatriation
17 grants to repatriate items from Federal agencies,
18 but those will be determined on a case-by-case
19 basis.

20 The other thing that has come up repeatedly is
21 the importance of feasts and other – other
22 activities after a specific religious activity
23 related to reburial, that that is actually indeed
24 part of the ceremony and therefore critical to the
25 actual repatriation. And so I've worked with our

1 grant administrator and we now have wording that
2 will allow tribes to include those types of food
3 costs, which have normally been absolutely
4 disallowed, in repatriation grants. They just have
5 to explain that it is part of the ceremony. And
6 that wording actually has just been – we've just
7 sort of finalized that wording and I need to
8 actually update that on the website, so don't go
9 and grab the guidelines today. It will be there in
10 the next few weeks.

11 In terms of the future for grants, where I
12 think we're going is to start – over the past three
13 years I changed the final report so that I'm
14 actually getting real data; not just did you
15 complete, you know, the deliverables that were in
16 your grant agreement, but what are the numbers.
17 And hopefully my goal is by the end of the year to
18 actually provide a report to you that gives you
19 more data and more information to support why we
20 need additional funding in grants for tribes and
21 museums.

22 And my biggest concern that we have found, I
23 think going forward, is as grant applications
24 continue to be stronger and stronger each year,
25 there is starting to be a concern that the Review

1 Panel has noted a tension between new grantees that
2 are trying to come into the process versus those
3 that are really strong and know what they're doing.
4 And so I don't know what to do with that, but I did
5 want to tell you that that's a concern that's been
6 noted is how do we get folks who are starting at
7 the ground and have more kind of programmatic needs
8 but that isn't really what the grants are about.
9 How are they competing against those that are more
10 established?

11 I have also been asked to speak quickly about
12 webinars and the status of the video project.
13 Those are you who were here Tuesday night saw the
14 first DVD that is complete. That project is
15 actually done, in terms of the production, and I
16 actually have on my desk all of the completed DVDs.
17 So we will now be moving to distribution on that
18 project.

19 And the second – so I think that's it on that.
20 In terms of webinars, we also – Jaime and I took on
21 a really exciting project in FY10 of coming up with
22 a new way to train, trying to get training out to
23 folks that's much less expensive and much more
24 realistic for those who can't travel to our – the
25 NAGPRA basics training or just to travel to

1 trainings. And we were able to work with the Park
2 Service to put out webinars, and in FY10 we put out
3 eight of these. Three of them were when we only
4 had the ability to have 25 people on the line; 5 we
5 were opened up to having up to 200. Our most
6 successful one was certainly on the CUI rule, which
7 thankfully we got the capacity to have up to 200
8 after that rule came out or right at the same time,
9 and we had over 100 on that webinar.

10 I think they've been extremely successful.
11 Several of you have been speakers on them, and I –
12 we actually did one in FY11 where it was heavily –
13 the NAGPRA staff actually had a smaller role and we
14 were able to bring in experts from outside to
15 really drive that one on international
16 repatriations, and I hope that that's more of the
17 format that we continue to work on. But that's
18 been extremely successful. It was 40 percent –
19 almost 40 percent of all of our training numbers
20 for the past year and over 483 participated.

21 SHERRY HUTT: If I might, Madam Chairman, to
22 highlight what Sangita is saying, not every program
23 in the National Park Service does webinars, in
24 fact, very few do. And Sangita has been a leader
25 in this regard, such that we have an account

1 through her name that the rest of the Park Service
2 is availing themselves of. So this has been a very
3 forward-thinking program, and Jaime and she have
4 been the spearhead of this to bring that training
5 out and we can thus having training on more
6 discreet topics that address peoples' needs where
7 they can sit at their desk and participate. So
8 we'll have some recurring topics and some new
9 topics, topics that you all might suggest. But
10 this is a fabulously successful training modality
11 that we just never had before, and in these days of
12 lack of budget for travel, this has been absolutely
13 crucial, not just our travel getting out but
14 availing it of tribes and museums to have this
15 training.

16 The other thing I need to highlight before we
17 leave that Sangita has brought to the grants
18 program, and that is you can get a grant if you are
19 a museum or a tribe and you can leave money on the
20 table unwittingly. And Sangita has made it part of
21 her goals, and she hit 100 percent this year and in
22 past years, of making certain that all of the money
23 that is awarded be used and get out to the tribes
24 and museums, that nothing sort of lay on the table
25 and go back to the general fund. And that's a

1 commitment to service and constituent needs, and
2 that's been something that she – in addition to
3 everything else she's brought to the grants program
4 has been very meaningful to especially the small
5 museums and the tribes who depend on those funds.
6 Any questions?

7 ROSITA WORL: Any questions, comments?

8 It is now noon. Let's adjourn for lunch, and
9 return exactly at 1:00 o'clock. We will go through
10 the three presentations and then we will move that
11 agenda item that we were – on communications, we'll
12 have that right after the third presentation.

13 DAVID TARLER: Thank you, Madam Chair. Two
14 items, we have a presentation on the American
15 University/Washington College of Law State Burial
16 Laws Project that had been scheduled for yesterday.
17 That will be on the agenda this afternoon. And if
18 anyone wishes to avail themselves of the
19 opportunity to test the State Burial Laws Project,
20 we have law students from American
21 University/Washington College of Law sitting in the
22 library across the hall that are ready to
23 demonstrate the project. And they will be
24 available throughout today, they're there now, and
25 as well as tomorrow morning.

1 ROSITA WORL: Okay. Thank you. Let's adjourn
2 for lunch.

3 **LUNCH**

4 ROSITA WORL: Okay. We'll go ahead and call
5 the meeting to order, and our first presentation,
6 Angela Neller. Angela? Welcome, Angela.

7 **PRESENTATION: THE REPATRIATION WORK OF THE COLUMBIA**
8 **PLATEAU INTER-TRIBAL REPATRIATION GROUP, AND SOME**
9 **SPECIFIC TOPICS OF CONCERN**

10 **ANGELA NELLER**

11 ANGELA NELLER: Thank you. My name is Angela
12 Neller. I'm the Curator for the Wanapum Heritage
13 Center, and I represent the — or I provide
14 technical assistance to the Wanapum Band of Priest
15 Rapids in repatriation, and we work jointly with
16 the Columbia Plateau Tribes on repatriation issues.

17 We want to thank the Review Committee for this
18 opportunity to provide testimony on our experiences
19 with NAGPRA. We presented to you last on May 14,
20 at which time we provided testimony on our positive
21 experiences and barriers encountered in NAGPRA
22 compliance. Today we would like to provide
23 information to you on our repatriation work and
24 speak to some specific topics.

25 In 2010, the Columbia Plateau tribes have

1 repatriated a minimum number of 273 individuals,
2 4,204 associated funerary objects, 3,055
3 unassociated funerary objects, and 1 sacred object
4 from 10 museums and agencies published in 16
5 Notices of Inventory Completion and Intent to
6 Repatriate. The repatriation that stands out for
7 us is our work with the U.S. Army Corps of
8 Engineers, Walla Walla District on the Marmes
9 Rockshelter collection. Like the Paluus Cemetery
10 repatriation finalized in the 2006, this
11 repatriation is held up as a shining example of
12 cooperation between a Federal agency and tribes.
13 In truth it was a hard-fought battle, with the
14 tribes pushing the Corps along every step.

15 Multiple claims had been submitted
16 individually by the tribes in 1995. In April of
17 2006, the Columbia Plateau Inter-Tribal
18 Repatriation Group submitted a joint claim. We
19 repatriated part of the collection in 2009, the
20 older remains this past July, and hope to
21 repatriate the remaining human remains and
22 associated funerary objects in 2011 upon the return
23 of faunal collections that are currently out on
24 loan for research. We would like to address our
25 positive experiences and barriers encountered with

1 respect to this particular case.

2 The barriers encountered fall into three
3 areas: Kennewick Man, excessive spending and time,
4 and consultation. The Columbia Plateau Inter-
5 Tribal Repatriation Group believes that the
6 difficulty encountered in this repatriation was due
7 to the Bonnichsen vs. United States case as it
8 relates to the age of the remains found at the
9 site, which had old occupation levels dating to the
10 same period as the Kennewick Man remains. The
11 agency's approach was to create documentation that
12 was legally defensible in dealing with the Native
13 American and cultural affiliation determinations.
14 This resulted in the agency determining that part
15 of the collection was Native American and subject
16 to NAGPRA and part was not. The corps felt that
17 there was insufficient evidence to make a
18 determination of Native American for the older
19 portion of the collection. The tribes felt that
20 this was based solely upon age and did not take
21 into account the extensive stratigraphic evidence
22 that showed continual occupation of the site over
23 time. It appeared to the tribes that the corps did
24 not understand the differences between NAGPRA
25 requirements for collections as in this case,

1 versus inadvertent discoveries, as in the Kennewick
2 Man case.

3 The desire to create defensible documentation
4 resulted in excessive spending of both time and
5 money by the agency for expert opinions on the
6 applicability of NAGPRA, whether the remains were
7 Native American, and the determination of cultural
8 affiliation. As studies were completed, staff of
9 the agency did not like the results and continued
10 to contract with new experts for additional studies
11 and ended up writing their own in-house report.
12 Additionally the agency took the approach that each
13 set of remains and associated funerary objects had
14 to be evaluated on their own merit, even though
15 they were from the same archaeological site that
16 was continuously occupied over thousands of years,
17 that has had multiple studies done by acknowledged
18 experts, is located in an area continuously
19 occupied over a thousand years – over thousands of
20 years, and one mile away from a previous
21 repatriation, the Paluus Cemetery site, for which
22 cultural affiliation studies had already been
23 completed by the agency. The tribes felt that not
24 only were the studies excessive, but that the
25 agency was reinventing the wheel, given that there

1 was plenty of readily available documentation to
2 make those determinations without having to do
3 additional studies. The tribes repeatedly referred
4 the agency to documentation on geographical,
5 kinship, biological, archaeological, ethnographic
6 and historic evidence, and expert opinions.

7 With regards to consultation, the tribes were
8 the ones to initiate consultation with the corps.
9 Consultation proved to be minimal with the tribes
10 being informed rather than consulted. Further
11 consultation was held at the continual requests of
12 the tribes, with the goal of moving the claim
13 forward, providing input, and getting information
14 and updates from the agency. The tribes felt that
15 their input was ignored by the corps, even though
16 the tribes themselves employed professional staff
17 who have subject matter expertise in archaeology,
18 ethnography, NAGPRA, museum collections management,
19 and who work with tribal informants. So that's it
20 for negative.

21 Our positive experiences were due to Lt.
22 Colonel Michael J. Farrell, the National NAGPRA
23 Program, and the agency support staff. We would
24 not be where we are today without the leadership of
25 Lt. Colonel Michael J. Farrell, who took over the

1 command of the U.S. Army Corps of Engineers, Walla
2 Walla District in June of 2008. He made it a
3 priority to work with the tribes in all areas and
4 took into account our concerns and consulted with
5 us. I'd like to quote one of our tribal leaders
6 who said, The Creator answered our prayers when he
7 sent Lt. Colonel Farrell to the Walla Walla Corps.
8 He listened to us with his heart and not just with
9 his ears.

10 Lt. Colonel Farrell tasked his staff with
11 moving forward on this project, finding funding,
12 and acquiring the assistance of the U.S. Army Corps
13 of Engineers Portland Division staff to review the
14 previous work done for the repatriation. This
15 review resulted in confirmation of what the tribes
16 had been saying all along, the determination of
17 Native American for the older remains and
18 assistance in finalizing the cultural affiliation
19 determination for all remains. Lt. Colonel Farrell
20 oversaw this repatriation personally and made
21 NAGPRA compliance a priority.

22 The National NAGPRA Program was instrumental
23 in helping us move forward with the repatriation.
24 They participated on a conference call between the
25 tribes and agency staff to get clarification on the

1 requirements of NAGPRA under the law and
2 regulations. They also committed to working with
3 the agency to review notice information early so
4 that additional information that may be needed
5 could be received in a timely manner. They helped
6 to get the notices through the internal review and
7 approval process for publication in order to meet
8 the set reburial date that would allow Lt. Colonel
9 Farrell to participate before his command ended.
10 In this and previous repatriations, the U.S. Army
11 Corps of Engineers Walla Walla District, we have
12 received excellent support from the agency's
13 rangers and other land and habitat management unit
14 staff. They have provided us with reburial
15 locations, transportation, water, set up for
16 ceremonies and so forth. We would like to
17 acknowledge that support here and express our
18 appreciation for their help.

19 So on to my other topics. We have identified
20 four additional topics to discuss: repatriation
21 grant deadlines, nonfederally recognized tribes,
22 Review Committee meetings, and joint claims.

23 The application period for repatriation grants
24 this year was from October 1, 2009 through June 30,
25 2010. Applications for repatriation grants cannot

1 be submitted between June 30 and October 1, during
2 the time that most reburials occur. It is our
3 understanding that the deadline of June 30 has been
4 set in order to meet the annual fiscal reporting
5 responsibilities of the National NAGPRA Program.
6 While logistically reasonable, this proves to be
7 problematic to tribes who conduct reburials during
8 the warmer months of the year. Although the
9 National NAGPRA Program has provided a process to
10 preapprove applicants before the deadline, all
11 required documentation must still be submitted
12 before the June 30th deadline, including copies of
13 published Federal Register notices. Given that
14 tribes typically don't have control over when
15 notices are finalized, approved and processed, it
16 is hard to preplan repatriation grant applications
17 in a manner that provides submittal of all the
18 required documentation by the June 30th deadline.

19 If funding is needed by the tribes for
20 reburial activities, this means that reburials must
21 be held off until the application period is open
22 again, thus delaying what is deemed a fundamental
23 responsibility, to expeditiously rebury the
24 ancestors. Beyond asking the Federal Government to
25 change its fiscal year, we have no recommendations

1 but did want to bring it up to the committee as an
2 issue of concern.

3 The second topic regards nonfederally
4 recognized tribes. The Wanapum Band of Priest
5 Rapids would like to specifically address the issue
6 of nonfederally recognized tribes and NAGPRA. They
7 want to note that there are cases where an Indian
8 group has chosen not to be federally recognized, as
9 in the case of the Wanapum Band, who refused to
10 sign the 1855 treaty. In other cases, tribes had
11 no choice and are now categorized as nonfederally
12 recognized with no acknowledgement to their
13 histories or vested interests. There are
14 nonfederally recognized tribes that have a proven
15 track record showing their long-term commitment to
16 caring for the ancestors and are acknowledged
17 leaders in traditional practices. The Wanapum
18 believe that an amendment is needed to NAGPRA that
19 acknowledges a nonfederally recognized tribe's
20 rights as culturally affiliated descendants, which
21 provides a way for them to participate and move
22 forward in the NAGPRA process on an equal level.

23 With regards to the documentation provided to
24 the NAGPRA Review Committee in your meeting
25 binders, I have regularly attended the NAGPRA

1 Review Committee meetings over the past seven years
2 and applaud National NAGPRA and the committee on
3 streamlining the procedures for testimony and
4 documentation regarding disputes and dispositions.
5 Although this has made for more concise
6 presentations, there is a downside to it from the
7 perspective of an audience member. One of the
8 benefits of attending the Review Committee meetings
9 is to gain insight into how the committee works,
10 what the committee oversees, and what evidence the
11 committee takes into account when making informed
12 decisions on disputes and dispositions. This is
13 helpful to both tribes and institutions. With the
14 procedural changes, presentations to the committee
15 have been shorter and reference made to factual
16 information within your binders. Audience members
17 no longer have the details they used to be provided
18 through testimony. I would like to recommend that
19 documentation provided to the Review Committee be
20 available to audience members and others who cannot
21 attend as PDF files on the National NAGPRA Program
22 website.

23 The last topic is an issue that we have
24 recently faced and is not addressed in the written
25 version of our testimony. Rex Buck, Jr., of the

1 Wanapum Band has asked that I address it at this
2 time. This regards joint claims and museum or
3 agency procedures for addressing cultural
4 affiliation and repatriation decisions in these
5 cases. Since 2005, the Columbia Plateau Inter-
6 Tribal Repatriation Group has put forth a large
7 number of joint claims, given their tribal
8 relatedness and the shared geography of usual and
9 accustomed places. Typically our experience has
10 been that each claimant is assessed as to their own
11 – whether they are – whether or not they are
12 culturally affiliated. Because we have made a
13 joint claim, no one tribe is determined to be more
14 culturally affiliated than another and repatriation
15 occurs to all.

16 Recently we have experienced a situation where
17 a museum has made a sole repatriation determination
18 within the situation of a joint claim, in essence
19 treating the joint claim as if it were competing
20 claims. This, we are told, is based upon a strict
21 reading of NAGPRA language, as expressed in the
22 singular, for example, a tribe. This is
23 problematic and becomes a political issue for
24 related tribes who are culturally affiliated and
25 have chosen to work together.

1 In conclusion, while NAGPRA is not perfect and
2 can continually undergo fine tuning, this law helps
3 us to fulfill our obligations to the ancestors.
4 Without NAGPRA most, if not all, of the
5 repatriations and reburials we have completed would
6 not have been possible. The Columbia Plateau
7 Inter-Tribal Repatriation Group once again thanks
8 the Review Committee for this opportunity to speak
9 about our experiences.

10 **REVIEW COMMITTEE QUESTIONS AND COMMENTS**

11 ROSITA WORL: Thank you very much.

12 I think there might be some things that we
13 could do almost immediately. I think Sonya made
14 the recommendation this morning that we move to
15 provide the documentation on PDF form, so that's
16 something that we might want to consider right now
17 if you would like to make that motion.

18 **REVIEW COMMITTEE MOTION**

19 SONYA ATALAY: Sure, yes. Thank you for your
20 presentation. It's really helpful, and I would
21 like to make a motion that all of the documentation
22 that we're provided for these meetings be put
23 forward to the public in PDF format on the National
24 NAGPRA website.

25 DAN MONROE: Second.

1 ROSITA WORL: We have a motion made and
2 seconded. Any discussion on that motion?

3 Alan.

4 ALAN GOODMAN: Can — I seem to be out, but can
5 you hear me? I wonder, Sonya, if whether or not a
6 friendly amendment would be wherever practicable.
7 You know, for instance if it's a full-length DVD or
8 something of that sort, it might not be possible.
9 And I don't know if there's ever material that —
10 well, that's my amendment, friendly amendment, I
11 hope.

12 SONYA ATALAY: Sure. So what's the process for
13 amending a motion?

14 ROSITA WORL: If there are no objections to
15 that inclusion, we could add that to the motion, if
16 there are no objections to that. So we have a
17 motion before us with the inclusion of "whenever
18 feasible." Sorry. Are we ready for the motion?
19 All those in favor of the motion signify by saying
20 aye.

21 SONYA ATALAY: Aye.

22 ALAN GOODMAN: Aye.

23 ERIC HEMENWAY: Aye.

24 ADRIAN JOHN: Aye.

25 DAN MONROE: Aye.

1 ROSITA WORL: Aye.

2 MERVIN WRIGHT, JR.: Aye.

3 ROSITA WORL: Those opposed same sign. That
4 motion is adopted.

5 We really do appreciate, you know, you coming
6 forth with these recommendations. I think there
7 are some others that will require legal review or
8 review by National NAGPRA or –

9 SHERRY HUTT: Let me just – if I might speak to
10 two issues that Ms. Neller raised. First of all
11 with regard to your motion, thank you very much and
12 we will – we will get right on that. Make good use
13 of the website. We like people to go to the
14 website and we try to put lots of helpful things
15 there.

16 As to the idea of the grants, that sort of
17 dead period between June 30 and October 1, that's –
18 we don't close that so that we can do our National
19 NAGPRA report. We start our National NAGPRA report
20 on October 1. But the Federal budget system closes
21 down 60 days before the end of the fiscal year, and
22 when we do grants, we do a package, it goes through
23 an approval process through the Secretary's Office
24 and then it goes over to the billing folks, the
25 accounting office in Denver. So we need to close

1 down our shop in sufficient time to get the
2 paperwork through the Park Service to the Assistant
3 Secretary and then over to the billing office
4 before they shut down their books for the fiscal
5 year. So it's a Federal fiscal year driven
6 determination that puts that on there. Now, if
7 something were to come up in that period and
8 somebody were to foresee that they would need
9 repatriation funds, they still communicate with us
10 and we try and work things out.

11 There's one other aspect to that too and that
12 is that Congress has been wonderful in giving us
13 grant funds on an annual basis, and what we do is
14 we - the repatriation funds are not competitive, so
15 every good repatriation grant gets funded as we go
16 through the year. And then we get down to the
17 project grants, those are the \$90,000 grants. So
18 when those are actually getting funded is in that
19 June period and so we then know exactly how many
20 dollars we have left and all of that goes out in
21 project grants so we don't hold back any money
22 after that, you see. So there would be no more
23 funds in that fiscal year to give out, and that's
24 why we tell people if you want a repatriation grant
25 to be able to repatriate in July, August, and

1 September, please ask for the money before the end
2 of June so that we can accommodate you with those
3 funds that you will need during that period. So
4 that's why that closure. It's fiscal year driven,
5 but it doesn't mean that – I mean, we understand
6 that most of the repatriations occur during the
7 warm period, and so we ask people to front-end
8 their requests so that we can get the money out to
9 them before.

10 And then the other item that Ms. Neller
11 raised –

12 ROSITA WORL: Before you move on with that,
13 Sherry, I'm wondering if that's something that you
14 might be able to add further explanation in your –
15 in the grant process or in the grant material.
16 That might be helpful if tribes know that they can
17 contact you.

18 SHERRY HUTT: Oh, yes. Yes, and we do – I
19 think this – as Sangita, she did a holistic review
20 of the grants package that goes out to be even more
21 explicit in terms of what's there. Yeah, that's a
22 very good point.

23 And the other item that is a concern, it's a
24 concern to us as well, is this idea that where
25 there are joint requests they are treated as though

1 they are competing requests. And unfortunately,
2 we're beginning to hear that more and more. I had
3 a Federal agency contact me just last week on that
4 same issue, so when we hear things like that,
5 obviously it's very good to bring it to your
6 attention and also it tells us that we need to
7 focus training on that issue, you know, to really
8 emphasize that during training, that joint requests
9 are not competing requests, and that it is not
10 necessary in the submission of a notice for a
11 Federal agency or a museum to determine who the end
12 recipient will be on human remains. It's all of
13 those who are culturally affiliated, they may bind
14 together as a group and make a joint request to
15 have them or they may have one that steps forward.
16 That is not a decision that the notice filing
17 entity needs to resolve before they submit it. If
18 that's holding things up, then we need to do more
19 training on that issue to clarify that. It should
20 not hold things up. We appreciate that point.

21 ROSITA WORL: The other issue is the issue of
22 the nonfederally recognized tribes, and this is an
23 issue that's been raised a number of different
24 times, and more recently in the GAO report. And we
25 can't resolve it here, but we could offer – you

1 know, we could make a recommendation in our annual
2 report to Congress that maybe it's something that
3 they might wish to reconsider and then invite, you
4 know, maybe hold a public hearing on it so that we
5 could address the issue, because it is an issue
6 that comes before the Review Committee a number of
7 times. So that's just one possibility that we
8 might be able to do on that. So we'll take that
9 under advisement, and thank you very much.

10 Do we have any further questions?

11 MERVIN WRIGHT, JR.: Yeah, I've got a question,
12 and this is relating to the nonfederally recognized
13 tribe issue. Has the Wanapum Band received a
14 grant?

15 ANGELA NELLER: No.

16 MERVIN WRIGHT, JR.: No?

17 ANGELA NELLER: No.

18 MERVIN WRIGHT, JR.: You know, certainly the
19 issue came up yesterday in the dispute with regard
20 to what constitutes a federally recognized tribe,
21 and, you know, it was also described that with
22 regard to the status of corporations that there is
23 a long judicial history of decisions that support –
24 that I guess establishes equalization with regard
25 to that federally recognized status, absent any

1 distinct language, you know, in the legislation or
2 in the regulation that addresses that matter. I
3 mean, it's just something that rests and stands as
4 it does.

5 And I know that with regard to those bands and
6 tribes that are not federally recognized it is a
7 very contentious political issue here in this city,
8 and the Carcieri decision that was recently made is
9 directly associated with those tribes that are
10 recently recognized, and it also affects lands that
11 are taken into trust by tribes that are federally
12 recognized after 1934. And so, you know, we start
13 addressing that particular issue with regard to
14 Federal recognition. It's not, I think, a simple
15 one that this body here can make a recommendation.
16 Certainly, we can address it and put that
17 recommendation forward, but I know that it's going
18 to take a very long time to establish the legal
19 bounds for how nonfederally recognized tribes will
20 be addressed by this legislation.

21 ROSITA WORL: Any further comments or
22 questions? Well, thank you very much for your
23 great report, and I am assuming that it has been
24 made available to —

25 ANGELA NELLER: It's on — you have it in your —

1 ROSITA WORL: No, no. I meant to the U.S.
2 Corps of Engineers.

3 ANGELA NELLER: Yes.

4 ROSITA WORL: Yes, great. Thank you very much.

5 ANGELA NELLER: Okay. Thank you.

6 DAVID TARLER: Madam Chair, at this time I
7 would like to make a request. Yesterday we had on
8 the agenda a presentation by American
9 University/Washington College of Law on a project
10 that they presented during NAGPRA at 20 earlier
11 this week and where they rolled out the website on
12 the State Burial Laws Project. They did come here
13 yesterday, and we came to an agreement that they
14 would make a presentation today. Before we broke –
15 before we broke for lunch I made the announcement
16 that AU students were in the library across the
17 hall to demonstrate the State Burial Laws Project.
18 We have Rachel Zoghlin, a second-year law student
19 at American University/Washington College of Law,
20 and I would request that she be allowed to make her
21 presentation now, and again reiterate that
22 throughout today and tomorrow morning, AU students
23 will be available in the library across the hall to
24 demonstrate the project.

25 ROSITA WORL: Great. Thank you, and thank you

1 for agreeing to delay your presentation until
2 today. Thank you very much. So let's hear your
3 presentation.

4 **PRESENTATION: THE AMERICAN UNIVERSITY/WASHINGTON**

5 **COLLEGE OF LAW STATE BURIAL LAWS PROJECT**

6 **RACHEL ZOGHLIN**

7 RACHEL ZOGHLIN: Thank you very much for having
8 us. Unfortunately, Professor Clark wasn't able to
9 make it back and my colleague, the 3L Kate
10 Halloran, was actually unable to make it as well.
11 But as you all know the Native American Graves
12 Protection and Repatriation Act deals with
13 situations when human remains and funerary objects
14 are unearthed on Federal or tribal lands. However,
15 when human remains and funerary objects are found
16 on private or state-owned land, state laws govern.
17 Such laws vary widely from state to state and
18 there's no – often no clear protocol for how to
19 deal with such discoveries.

20 The State Burial Laws Project began at the
21 National NAGPRA Program office at the National Park
22 Service. The NAGPRA office regularly receives
23 phone inquiries regarding the accidental and
24 purposeful, licit and illicit discovery,
25 excavation, removal, or collection of Native

1 American human remains on state-owned or privately
2 owned lands. As a result of these numerous
3 inquiries the NAGPRA office recognized the need for
4 a comprehensive resource regarding state laws
5 affecting burial sites, including the human remains
6 and objects interred with those burials.

7 In 2008, the NAGPRA Program office partnered
8 with the American University/Washington College of
9 Law to create the State Burial Laws Project, where
10 student law interns created questions to guide
11 their state-by-state inquiries, conducted statutory
12 research within 50 states and the District of
13 Columbia, and summarized their findings in short,
14 relevant annotations. This website is a collection
15 of work from the Washington College of Law State
16 Burial Laws Project. Students have compiled
17 research addressing myriad questions ranging from
18 how respective states deal with issues of Native
19 American human remains and burial objects to how
20 states punish individuals convicted of theft,
21 destruction of property and hate crimes, to how
22 states recognize minority groups. Students
23 summarized relevant state statutes so that the
24 answers to these vital questions would be
25 accessible to those employed in the legal field as

1 well as individuals without a legal background.
2 Visitors to our website may search for answers to
3 specific questions within an identified state or
4 may view generally how states deal with these
5 issues differently. We've also partnered with
6 Westlaw to ensure that as much as possible our data
7 remains current as these statutes are updated by
8 respective state legislatures.

9 Most of the state annotations have been
10 completed; however, not all of them are uploaded on
11 the website yet. So if you see on the screen there
12 the ones that are in red are the ones that are
13 available online right now. The rest are currently
14 with Washington College of Law IT Department and
15 should be uploaded by the end of the year.

16 So one of the states that I worked on this
17 summer was the District of Columbia, and Kate
18 worked on Hawaii, so we thought it might be
19 interesting for people to see – compare where
20 you're sitting right now with probably where
21 everybody would like to be right now. So you can
22 click on the states on the map to go to them or
23 also there's a list down here. It's hard to find
24 DC over here, so I'll just click.

25 The first question we'll just compare really

1 quickly, What's the criminal liability for
2 unlawfully selling or purchasing human remains or
3 funerary objects? And a little drop-down list
4 comes down there. It says, in DC, Disturbing or
5 removing a dead body from a grave without legal
6 authority or family consent for the purpose of
7 dissecting, buying, selling or trafficking shall be
8 imprisoned not less than one year or not more than
9 three years. A person that's convicted of
10 trafficking in stolen property shall be fined not
11 more than \$10,000 or imprisoned for not more than
12 ten years, or both.

13 To contrast that, we can look at Hawaii, It is
14 unlawful to sell or trade prehistoric or historic
15 human skeletal remains or associated burial goods.
16 It's unlawful to remove those remains or associated
17 burial goods from the state's jurisdiction without
18 a permit. It's unlawful to remove aviation
19 artifacts held by state lands or agencies from the
20 state's jurisdiction without a permit. Human
21 remains made into artifacts prehistorically are
22 exempted. There's a maximum \$10,000 penalty for
23 committing this offense, and each object or part of
24 the item prohibited under this law is considered a
25 new and separate offense subject to the penalty.

1 To get an idea of some of the other questions
2 that we looked at, we'll go back to DC. Sorry
3 about that, lost my window there. I've got a list
4 here, so one of the questions was, Who has custody
5 rights over discovered human remains?

6 SHERRY HUTT: While you're looking for that,
7 might I just inform the Review Committee, this
8 project was under the direction of David Tarler,
9 working with as many as 10 to 15 law students at a
10 time, semester to semester over the last, what,
11 four or five years. And it was - if you, you know,
12 NAGPRA is graves protection, but where's that
13 protection piece? You know, we deal so much with
14 repatriation. And so looking at all the state laws
15 was to look at how the protection piece plays in,
16 and as well we hope that over the coming years, you
17 know, you have two states that have state
18 protocols, Iowa and Colorado. Hopefully, all the
19 states will eventually have state, Federal
20 consistent protocols, and having these laws is
21 critical to that. And we get calls, even from
22 States Attorney's General, David fields a lot of
23 calls asking what their own laws are with regard to
24 burials. We have contractors building that want to
25 be respectful to sites. And so there is such a

1 multi-purpose use of this site. It's a huge
2 benefit, I think, to a greater public. And the
3 partner at American University, at the law school
4 law library, has been fabulous. The Dean at the
5 law school now actually has an internship, a dean's
6 internship, to keep maintaining this website. So
7 this is a huge piece of work that's been going on
8 that you may not have heard much about and now it's
9 coming to tremendous fruition.

10 RACHEL ZOGHLIN: So I got the window back up.
11 The second question that we were going to look at
12 is, Who has custody rights over discovered human
13 remains? In DC, the laws says, In disputes over
14 human remains with funeral services establishments,
15 the matter is referred to the Mayor or his/her
16 designee. A lot of times the statute didn't speak
17 specifically to the question we were looking for so
18 we had to find the best possible answer with what
19 the statute said. The Director of the Department
20 of Human Services is authorized to provide
21 containers for the reception, burial and
22 identification of all bodies of indigent persons –
23 and unless otherwise directed, the right to control
24 the remains of a deceased person and his or her
25 burial shall vest in the following order: first,

1 the competent surviving spouse; second, the sole
2 surviving competent adult child, or if there is
3 more than one, the majority of the surviving
4 competent adult children; third, the surviving
5 competent parent or parents; fourth, the surviving
6 competent adult person in the next degree of
7 kindred; or five, an adult friend or volunteer.

8 We can look back to Hawaii for how they deal
9 with that, All historic property, which is how –
10 included in that definition is human remains and
11 their burial objects – on state-owned land or under
12 state-owned water belongs to the state. Such
13 historic property is controlled and managed by the
14 Department of Land and Natural Resources. The
15 department is responsible for disposing of historic
16 property in accordance with law and methods of
17 preservation. The department also controls permits
18 for research affecting historic property. The
19 state holds state-owned burial sites in trust for
20 lineal or cultural descendants. The state cannot
21 transfer historic property without consulting the
22 department and cannot transfer any burial site
23 without consulting the appropriate island burial
24 council.

25 For all of the states for which we were able

1 to link directly to the state statute, some states
2 made their statutes available through research
3 websites like Westlaw or LexisNexis. For those
4 that were just uploaded directly to the web, we
5 have links directly to those sites. So if you
6 click here, it will take you to that exact statute
7 where we got this from, the relevant state. So
8 this is that part of the Hawaii statute.

9 The last one we were going to look at was:
10 What public health regulations exist for the
11 removal and burial of human remains? So we'll look
12 at Hawaii, since we're here now. A permit from the
13 department of health is required before any human
14 remains or the receptacle containing the remains
15 may be exposed, disturbed, or removed from its
16 burial place. Once a permit is issued, the
17 procedures outlined by the permit must be followed.
18 The burial place must be returned to its former
19 condition at the conclusion of any removal or
20 disturbance. The department of land and natural
21 resources may authorize the prohibited actions
22 without a permit from the department of health.

23 Going back to DC, it says, No grave shall be
24 opened if the person buried died of cholera, yellow
25 fever, typhus fever, smallpox, leprosy, the plague,

1 tetanus, diphtheria, scarlet fever; however the
2 Director of the Department of Health in DC may
3 authorize such opening under sanitary conditions.
4 It's really the only restrictions they have on
5 opening up a grave – public health issues they have
6 with opening up graves. But anybody that's
7 convicted of violating that law is punished by a
8 fine of not more than \$200 or imprisonment for not
9 more than 90 days or both.

10 So if anybody wants to access this site, it's
11 up and it will continue to be updated as the IT
12 department posts the rest of the annotations that
13 we have. It's www.wcl.american.edu/burial. Thank
14 you very much.

15 ROSITA WORL: Thank you very much for your
16 report and also thank David for all of his work
17 with this.

18 Do we have any questions or comments? Eric.

19 **REVIEW COMMITTEE QUESTIONS AND COMMENTS**

20 ERIC HEMENWAY: I'd like to say thank you for
21 rescheduling your agenda to be here today, and this
22 has the potential to be a huge resource in Indian
23 country because a lot of these burials fall outside
24 the jurisdiction of NAGPRA. And being from the
25 Midwest and Michigan, we have much fewer Federal

1 lands than out West, and the vast majority of these
2 burials are going to be on private land. And we
3 still have this dilemma of graves protection. And
4 even though this doesn't fall under the scope of
5 NAGPRA as a law, it falls under the spirit of the
6 law and how a tribe can take immediate action into
7 protecting a burial site or cemetery. So I would –
8 I'm very excited to research this more when I get
9 back home and start applying, and I encourage all
10 other tribes to utilize this resource, and thanks
11 for all your work. Thank you.

12 ROSITA WORL: Thank you very much.

13 MERVIN WRIGHT, JR.: I have a question.

14 ROSITA WORL: Oh, I'm sorry. Go ahead.

15 MERVIN WRIGHT, JR.: How long is the
16 demonstration going to be going on next – across
17 the hallway?

18 DAVID TARLER: The demonstration will be
19 throughout today until 5:00 o'clock. What?

20 RACHEL ZOGHLIN: Maybe a little earlier than
21 that.

22 DAVID TARLER: All right, maybe a little
23 earlier. We have finals coming up at the law
24 school.

25 MERVIN WRIGHT, JR.: All right, my second

1 question was could this also identify the state
2 agency within the state organization that is
3 responsible for the relation between tribes? Like
4 in Nevada, we have the Nevada Indian Commission.
5 They are our state agency. And I think in
6 California, it's the California Indian Heritage
7 Commission. So I think each state should have an
8 agency and possibly identify it here with this
9 project.

10 RACHEL ZOGHLIN: One of the questions that's
11 addressed in the annotations is: Is there a state
12 Indian affairs commission or an equivalent, and
13 what their job is and what their responsibilities
14 are.

15 DAVID TARLER: And I had suggested when I saw
16 the first iteration of this that all of the states
17 in which the Review Committee members reside be
18 included because I anticipated that they would all
19 be interested in seeing how the website worked with
20 respect to their own states. And I apologize that
21 Nevada is not included at this time. The – but
22 that is one of the questions that is there.

23 One of the benefits of having a continually
24 updated website through the library at a law school
25 is that as laws are amended or enacted they can be

1 added to the website. And depending on whether the
2 law school agrees or not, and I think they are
3 inclined to agree, that the next phase of this
4 project after all of the annotations of the state
5 laws are completed would be to look at
6 administrative codes for those states and then look
7 at county and city codes, because so many of the
8 laws that regulate human remains, burials, funerary
9 objects, and decision making are at those levels of
10 government.

11 And so this is going to be a multi-year
12 project and as far as I know the only one where we
13 can continually update the statutes as they are
14 passed and not only add questions when the
15 recommendations are made and when there is a need
16 but also go directly to those statutes and
17 ordinances. And one of the advantages of this
18 system is we will – we will know how many people
19 access the website, and I understand that at some
20 point there will be a means by which users of the
21 website can communicate with American
22 University/Washington College of Law to make
23 recommendations and ask questions. These are the
24 frequently asked questions that we have come up
25 with over the years. But obviously the public will

1 have an opportunity to have some input as to what's
2 contained in the website as well.

3 RACHEL ZOGHLIN: We also have some handouts
4 that we'll - I'll leave in the back for everyone if
5 somebody wants to grab them. It just has a picture
6 of the website and the web address.

7 ROSITA WORL: Okay. Thank you very much.

8 RACHEL ZOGHLIN: Thank you.

9 ROSITA WORL: I think we're ready for our next
10 presentation from Ian Thompson, from Oklahoma,
11 Choctaw Nation of Oklahoma.

12 While Ian and his party is coming up, I just
13 might note that in the back we have a box of cedar.
14 In our country we're very fortunate in having an
15 abundance of this sacred plant, so for those tribal
16 members who would like to have some of that, the
17 cedar branches, it's out there in the back.

18 And if I may, while he is distributing that, I
19 just wanted to acknowledge our fellow brothers from
20 the NAGPRA Review Committee from the Smithsonian.
21 We have with us Roland McCook, Sr., I guess who is
22 the Vice-Chair, and then also John Johnson in the
23 back. Thank you for attending and someday we hope
24 we can come to your meeting as well.

25 Mr. Thompson.

**PRESENTATION: THE NAGPRA PROCESS FROM THE VIEWPOINT
OF INDIAN TRIBES BELONGING TO THE NATIVE AMERICAN
REPATRIATION SUMMIT: WHAT IS WORKING AND NOT
WORKING, SUGGESTIONS FOR IMPROVEMENT, AND COMMENT
ON THE NEW RULE AT 43 CFR 10.11**

IAN THOMPSON

IAN THOMPSON: (Comment inaudible.)

ROSITA WORL: Turn your mic on, please.

IAN THOMPSON: My apologies. I am Dr. Ian Thompson, with the Choctaw Nation of Oklahoma. I'm the NAGPRA Coordinator and the tribal archaeologist for the tribe, and I'm here with my boss, Terry Cole. He's the THPO for the tribe. I'd like to thank the NAGPRA Review Committee for allowing us time to speak. What I have is a resolution that I would like to present before you. This resolution was created by approximately 15 tribes from Oklahoma and the southern part of the United States. We met together in Choctaw Country, October 25, 26, and 27, to discuss issues concerning NAGPRA and NAGPRA compliance. We discussed the strengths that we see in it, the weaknesses we see in it, and then also ideas that we have in improving the process for tribes and improving compliance.

1 Again the people who met at this get-together
2 were the NAGPRA coordinators and the Tribal
3 Historic Preservation Officers for the tribes, so
4 we're people who are on the ground and approaching
5 the museums and the Federal agencies to try to get
6 them to comply with NAGPRA. We're also the people
7 who do a lot of the repatriation and reburial work.
8 So if I may I would like to read this so it can go
9 on the record.

10 Resolution of a coalition of authorized
11 representatives of Oklahoma and Southern Indian
12 tribes on the 20th anniversary of the Native
13 American Graves Protection and Repatriation Act.

14 Whereas: In recognition of the 20th anniversary
15 of the signing of the Native American Graves
16 Protection and Repatriation Act, authorized
17 representatives from the federally recognized
18 Choctaw Nation of Oklahoma, Caddo Nation, Jena Band
19 of Choctaw Indians, Chickasaw Nation, Osage Nation,
20 Peoria Tribe of Indians of Oklahoma, Iowa Tribe of
21 Oklahoma, Muscogee (Creek) Nation, Seminole Nation
22 of Oklahoma, Wyandotte Nation, Kaw Nation, Sac and
23 Fox Nation, and Absentee Shawnee Tribe,
24 representing approximately 500,000 tribal members,
25 met in Durant, Oklahoma, on October 26th and 27th,

1 2010, to discuss NAGPRA; and

2 Whereas: The authorized tribal representatives
3 created this resolution, which was later signed by
4 additional tribes and organizations, to submit to
5 the NAGPRA Review Committee and ultimately the
6 Secretary of the Interior; and

7 Whereas: As experienced by the above Indian
8 tribes and documented in the recent Government
9 Accountability Office report, "NAGPRA – After
10 Almost Twenty Years, Key Federal Agencies Still
11 Have Not Fully Complied with the Act," no
12 enforcement exists to ensure NAGPRA compliance by
13 Federal agencies; and

14 Whereas: As experienced by the above Indian
15 tribes and documented in the recent GAO report,
16 Federal agency representatives report that NAGPRA
17 is a low priority within their agencies; and

18 Whereas: As documented in the GAO report, the
19 National NAGPRA Program has not effectively carried
20 out its responsibilities; and

21 Whereas: As experienced by the above Indian
22 tribes and documented in the GAO report, key
23 Federal agencies are still out of compliance with
24 NAGPRA and have not published Notices of Inventory
25 Completion in the Federal Register; and

1 Whereas: As documented in the recent GAO
2 report, a lack of transparency and objectivity
3 exists in the action of the National NAGPRA Program
4 and the Review Committee; and

5 Whereas: As experienced by the above Indian
6 tribes and documented in the recent GAO report,
7 civil penalty allegations against museums have
8 increased dramatically over the past three years;
9 and

10 Whereas: At the current rate of the NAGPRA
11 process it will require some Indian tribes, for
12 example the Caddo Nation, more than a century to
13 repatriate their known culturally affiliated human
14 remains, associated funerary objects, and sacred
15 objects, and items of cultural patrimony; and

16 Whereas: The above Indian tribes agree that
17 the NAGPRA and repatriation processes are
18 unacceptably slow and burdensome in their present
19 form.

20 Therefore: The respective federally recognized
21 Indian tribes listed above request the following
22 steps to improve the NAGPRA process:

23 Point A, Appointment of an ombudsman to work
24 with the Indian tribes and Federal agencies to
25 facilitate timely NAGPRA compliance. Also appoint

1 four full-time NAGPRA investigators within the
2 Department of the Interior to ensure that museums,
3 universities, and institutions that receive Federal
4 funds comply with NAGPRA;

5 Point B, Increase the maximum civil penalty
6 amount under NAGPRA;

7 Point C, Federal agencies, in consultation
8 with Indian tribes, shall locate and secure
9 reburial sites on federally protected land to be
10 used by the Indian tribes for the reburial of human
11 remains and objects repatriated through the NAGPRA
12 Process;

13 Point D, NAGPRA Grants shall support projects
14 that involve consultation with museums,
15 universities, and institutions that receive Federal
16 funds and hold Federal collections;

17 Point E, Indian tribes be provided with a copy
18 of information that Federal agencies submit to the
19 National Park Service for inclusion in the
20 Culturally Unidentifiable Native American Inventory
21 Database, thus creating a process for directly
22 sharing information with Indian tribes;

23 Point F, Develop a NAGPRA tribal consultation
24 policy for continued information sharing among
25 Indian tribes, Federal agencies, museums,

1 universities, and institutions that receive Federal
2 funds that would include, but not be limited to,
3 NAGPRA inventories, summaries, archaeological
4 reports, and other relevant NAGPRA data;

5 Point G, The Department of Interior shall
6 promulgate the remaining reserved section(s) of the
7 NAGPRA regulations;

8 Point H, Support the NAGPRA at the level of at
9 least \$1 million for NAGPRA administration, and \$4
10 million exclusively for the NAGPRA grants to Indian
11 tribes and museums;

12 Point I, Federal agencies, museums, and
13 institutions that receive Federal funds, and have
14 NAGPRA eligible collections from the homelands of
15 Oklahoma's 39 tribes, shall participate in an
16 annual consultation meeting with these Indian
17 tribes in Oklahoma for the purpose of discussing
18 policy-making, priority-setting, funding resources,
19 and NAGPRA compliance.

20 That concludes the language of the resolution.
21 It's been signed by the Historic Preservation
22 Officers or NAGPRA coordinators for the Choctaw
23 Nation of Oklahoma, Thlopthlocco Tribal Town,
24 Absentee Shawnee Tribe, Alabama Coushatta Tribe of
25 Texas, the Jena Band of Choctaw Indians, the Quapaw

1 Tribe of Oklahoma, the Comanche Nation, the Kaw
2 Nation, the Wyandotte Nation, the Muscogee (Creek)
3 Nation, the Iowa Tribe of Oklahoma, the Caddo
4 Nation, the Peoria Tribe of Indians of Oklahoma,
5 the Cheyenne-Arapaho Tribe, and the Sac and Fox
6 Nation. And we're also supported by the National
7 Association of Tribal Historic Preservation
8 Officers.

9 I thank you for your time and for allowing us
10 to read this resolution.

11 ROSITA WORL: Thank you very much.

12 Let's see if our committee has any questions
13 or comments?

14 **REVIEW COMMITTEE QUESTIONS AND DISCUSSION**

15 MERVIN WRIGHT, JR.: I just have a comment and
16 want to thank you for this effort. I think the
17 program was out there, right, in Oklahoma? Was
18 this the meeting you guys were at, Sherry? I heard
19 of a meeting out there in Oklahoma that I -

20 SHERRY HUTT: Oh, that was the American
21 Association of State and Local History that we
22 participated in.

23 MERVIN WRIGHT, JR.: Okay.

24 SHERRY HUTT: That was different than this
25 meeting.

1 MERVIN WRIGHT, JR.: Okay. Yeah, I appreciate
2 the effort that the tribes out there in Oklahoma
3 put forward in looking at the GAO report.
4 Certainly it's going to be a wide range of
5 perceptions of what's been identified in that
6 report. Of course, here, you know, we've talked
7 about it in that regard to, you know, utilize that
8 report as a measuring device for where we are 20
9 years later. But I think at the same time, you
10 know, as I said this morning, there is the trust
11 doctrine that exists, you know, that we as tribes
12 cannot forget, you know, those trust principles
13 that have been established for so long, you know,
14 since the 1830 Marshall trilogy rulings that have
15 come out. Those really base the relationships
16 between the tribes and the Federal government. And
17 I think if we can put those out in front somehow
18 that, you know, we don't just try to take an effort
19 forward individually without paving that way for
20 the United States to recognize that trust
21 relationship.

22 ROSITA WORL: Thank you very much. There are
23 probably -- well, we probably share your
24 recommendations, particularly one of the ones we've
25 been requesting is additional funds, you know, so

1 that we could do our work adequately and also
2 increase funding for the grants for tribes and
3 museums. So we've made that request consistently
4 in our report to Congress. And certainly I think
5 some of these recommendations will also require
6 additional funding, but if – what I'd like to
7 request is to have National NAGPRA review the
8 recommendations and provide a response to us and
9 with – and to the coalition.

10 SHERRY HUTT: (Comment inaudible.)

11 ROSITA WORL: So if there are no objections,
12 that's how we will proceed with that. We want to
13 let you know that we do want to be responsive to
14 your concerns and your recommendations. There are
15 probably some that we might be able to implement
16 and consider. But there are others, I think, that
17 might require legislative action. But thank you so
18 much for sharing the results of your work with us.

19 IAN THOMPSON: Thank you, Chair and NAGPRA
20 committee and National NAGPRA.

21 SONYA ATALAY: Can I ask one quick question
22 before we move on?

23 ROSITA WORL: Go ahead.

24 SONYA ATALAY: Which is I would like to ask if
25 you would be willing to share a digital copy, an

1 electronic copy of this, a PDF? Just so that – and
2 if you're comfortable with it being shared more
3 broadly with – I would like to share it, for
4 example, with my own home institution and with
5 tribes that I work with if you're open to that.

6 IAN THOMPSON: Yes, we'd certainly be willing
7 to do that.

8 SONYA ATALAY: Great. Thank you.

9 ROSITA WORL: Okay. Thank you very much.

10 And we're ready for our next presentation from
11 Forest Service. And if you would for the record
12 identify yourself and an affiliation.

13 **PRESENTATION: AN UPDATE AND REPORT ON THE NAGPRA**
14 **ACCOMPLISHMENTS OF THE USDA FOREST SERVICE IN FY**
15 **2010**

16 **FRANK WOZNIAK**

17 FRANK WOZNIAK: Yes, Madam Chairperson,
18 members of the committee, my name is Frank Wozniak.
19 I'm the National NAGPRA Coordinator for the USDA
20 Forest Service, and I want to thank you today for
21 this opportunity – on behalf of the agency for this
22 opportunity to update the committee on the
23 implementation of NAGPRA by the Forest Service,
24 particularly over the past year. Before looking at
25 the data, which is at tab 16 of your books, I

1 wanted to thank Mariah Soriano of National NAGPRA
2 for the opportunity in several conversations to
3 work with her through various discrepancies between
4 the data that the Park Service holds and our own
5 information. This I think is part of what the GAO
6 intends, and I have to say it was a very rewarding
7 and pleasant experience and anticipate further
8 discussions with Mariah.

9 There's one area however I wanted to bring up
10 because it's likely – it's possible it will come up
11 in questions, and that is – it's an area that has
12 not yet – that Mariah and I have not yet had the
13 time to address in interchanges, and that is the
14 discrepancy between the number of repatriated
15 remains in the Federal agency repatriation data
16 sheet and the numbers that have been presented to
17 you in the spreadsheets, and in particular on these
18 – the spreadsheets are organized, as I think is
19 relatively obvious, I mean, there's a summary for
20 the whole of the Forest Service region by region.
21 Then behind – and the first sheet of each is a
22 database on the summary information, namely
23 unassociated funerary objects, sacred objects,
24 objects of cultural patrimony, listing all the ones
25 that we have identified and including those that we

1 have repatriated. That is followed by two separate
2 sheets for each of the regions organized in the
3 same fashion. In each of the regions it is broken
4 down forest by forest, which are our reporting
5 agencies – entities within the Forest Service.

6 You'll notice in there on the second sheet of
7 the summary, region by region, that we indicate
8 that we have repatriated 866 sets of remains. On
9 the Federal agency repatriation data page it's 757.
10 That was troubling to me, didn't have the time to
11 fully investigate it but did come upon one portion
12 of the discrepancy. And that is it's actually
13 related to one of the actions of the NAGPRA Review
14 Committee. Back in the late nineties, some of you
15 will recall, that there was a request for
16 recommendation on disposition of some 120 sets of
17 human remains that were considered to be culturally
18 unidentifiable by Fresno – by, get it correct, they
19 keep changing their names out in California –
20 California State University at Fresno. Having
21 lived in California at one time I tend to use the
22 abbreviated Cal State Fresno. But anyways, they –
23 the committee recommended, it was published as a
24 notice. The remains were repatriated to the
25 tribes. It was a joint effort, as some of you

1 might recall, between the Fresno State and the
2 college. We won't go into the details of how this
3 anomaly came to exist that they were culturally
4 unidentifiable, but the remains came from the lands
5 owned or managed by a variety of entities,
6 including the Forest Service. Fully one-third of
7 all of those remains came off of National Forest
8 System lands.

9 Now in the Notice of Inventory Completion,
10 which is what correctly the Park Service uses to
11 track all of this, numbers reported, you know, and
12 then we provide numbers repatriated, there's no
13 indication that there are 42 sets from National
14 Forest System lands, and that number 42 accounts
15 for almost half of the discrepancy. At some point,
16 you know, we'll have to come up with some way of
17 dealing with that, because I'm sure there are other
18 instances of that issue. But by that – and the
19 reason that I was able to track that is because of
20 longevity. I've been with the Forest Service doing
21 this work since 1992, have attended most of the
22 committee's meetings, and have fortunately always
23 been present at crucial ones that have been proved
24 advantageous in the future. And this seems to be
25 one of those.

1 Now moving on to the report for this year, in
2 Fiscal 2010, the Forest Service as a whole
3 repatriated more than 70 sets of human remains; 61
4 of those sets of remains were from the Coconino
5 National Forest in north central Arizona, which
6 were repatriated to the Hopi Tribe and reburied on
7 National Forest System lands. This is an important
8 event. It is an important event because it is the
9 first stage of the repatriation of more than 3,000
10 sets of remains from the Coconino National Forest
11 to the Hopi Tribe and the Pueblo of Zuni. If you
12 want details on that you can ask, but I won't
13 trouble you with it at this moment. This number,
14 3,000, represents approximately 50 percent of all
15 the human remains removed from National Forest
16 System lands nationwide before the enactment of
17 NAGPRA. It represents more than 60 percent of all
18 the remains that we have responsibility for that
19 remain to be repatriated. The dimensions of it I
20 think make it possible to understand why I called
21 this an important event. This is an event – it
22 will be a series of events. It is taking place in
23 close and continuous consultation with the Hopi
24 Tribe and the Pueblo of Zuni and will go on for
25 four or five years.

1 We are anticipating in other matters that with
2 the first publication of the first Notice of
3 Inventory Completion under 43 CFR 10.11 of human
4 remains from – that are culturally unidentifiable
5 done just recently by the Hiawatha National Forest
6 – and again, I want to thank Jaime Lavallee for her
7 prompt attention to this matter and usual
8 efficiency, and so those remains will be
9 repatriated in the very near future. And we
10 anticipate that there will be others of these
11 proceeding in the coming year and years.

12 One last thing is I wanted to bring your
13 attention to the first sheet that you have before
14 you which summarizes the numbers of unassociated
15 funerary objects, sacred objects, objects of
16 cultural patrimony, and just point out that in
17 terms of sacred objects we and the tribes have
18 identified 486 of those items, 362 of those have
19 been repatriated. The others are essentially
20 pending because we are waiting for specific
21 requests from a variety of tribes for the
22 repatriation of those remains. And when we receive
23 those requests we will proceed forthwith to their
24 publication in the Federal Register.

25 Finally, bring your attention to objects of

1 cultural patrimony. You'll see there that there is
2 a total of 624 that have been identified thus far,
3 and the process is going – is continually going on
4 as tribes visit, consult, view materials in
5 collections that came from our land. Of the – of
6 those 624, 622 have already been repatriated. And
7 I thought – I mean, it's a bit of information that
8 I was prompted to mention and bring to your
9 attention because of the discussions that were held
10 yesterday and questions of objects of cultural
11 patrimony.

12 So that is my presentation for this moment.
13 If you have any questions, I would be more than
14 happy to answer them.

15 ROSITA WORL: Thank you very much.

16 Does the committee have any questions or
17 comments?

18 Okay. Well, thank you very much for your
19 report.

20 FRANK WOZNIAK: Very good. Thank you very
21 much, Madam Chairperson.

22 ROSITA WORL: Always good to see you.

23 So Mr. DFO, does that end our presentations?

24 DAVID TARLER: Yes, Madam Chair.

25 ROSITA WORL: Okay. Then we'll go into – we

1 have committee discussions on our fall Review
2 meeting dates and then I think we have an agenda
3 item from this morning and then we need to discuss
4 the report to Congress.

5 So – and it does appear that we are going to
6 finish early, so if there are no objections, maybe
7 we could invite the public if we have any – it
8 looks like we'll have time for public comment, so I
9 just wanted to alert the public that you might be
10 thinking about that because it does appear that we
11 will have time.

12 **DATES FOR THE FALL 2011 REVIEW COMMITTEE MEETING IN**
13 **RENO, NEVADA**

14 ROSITA WORL: So let us move into a discussion
15 of the fall 2011 Review meeting in Reno, Nevada,
16 and we thank Mervin Wright for his kind invitation
17 to meet in Reno. But now let's select a date.

18 And I guess the very first thing we need to do
19 is identify, we have NCAI meeting in November, and
20 we also have I think the anthropological
21 association meetings in November, so why don't we
22 identify those – the important dates that committee
23 members often attend. And then of course we have
24 Thanksgiving.

25 MERVIN WRIGHT, JR.: The Intertribal Council of

1 Nevada, they meet in October. This year their
2 annual convention was the week of October 25, and
3 the state of Nevada became part of the Union on
4 October 31st and the state has declared the last
5 Friday of October a state holiday, so just for your
6 information. I'm not certain – I did send an email
7 to the Intertribal Council Executive Director
8 indicating that the NAGPRA Review Committee will be
9 meeting in Reno in the fall and I wanted to know
10 what the dates were scheduled for the 2011 annual
11 convention for ITCN, and I haven't heard back.

12 ROSITA WORL: We had a series of emails among
13 committee members, and I have on – and the dates
14 that I had put down were November 10 and 11. That
15 was before you came on, Adrian, we had emails going
16 back and forth trying to find an appropriate date.
17 How does November 10 and 11 look? Because I think
18 it didn't coincide with NCAI.

19 SHERRY HUTT: It's a Federal holiday.

20 DAVID TARLER: For the Review Committee's
21 information, November 11th is a Federal holiday.

22 ROSITA WORL: Does that mean you'd be paid
23 overtime or –

24 SHERRY HUTT: Well, and not only – not only
25 that, I mean, it's not a matter of convenience just

1 for the National NAGPRA staff but you tend to get
2 100 to 150 people who come to your meetings and
3 both in choice of place and date, you know, we need
4 to think of those constituents and their ability to
5 travel on those dates or to have permission from
6 their museums and agencies and tribes and expense
7 of traveling on those dates. And those buying
8 cheap tickets have some black-out dates, and it's a
9 Thursday, Friday.

10 ROSITA WORL: How about November 9 and 10? Any
11 comment? Would that work, Sherry?

12 (Discussion off the microphone.)

13 MERVIN WRIGHT, JR.: We're looking at the
14 second week in November.

15 SHERRY HUTT: The other – the other thing is
16 location and I'll tell you one of the locations
17 that we were trying to hold this at is the Judicial
18 College in Reno, and some of these facilities are
19 closed on those – but not on the – you know, closed
20 on the Federal holiday itself.

21 ROSITA WORL: So we have the suggestion of 9
22 and 10, would that work, or 8 and 9?

23 SHERRY HUTT: Yeah, if you give us a parameter
24 of what's good for you all, and like 8 and 9, for
25 instance, and when you're available and that it

1 doesn't conflict with other, you know, important
2 meetings and that sort of thing. And then we will
3 make sure the facility is also available on those
4 days, and if we have problems, get back to the
5 Chair. So it really works well when you give us
6 some parameter of good dates that are good for you
7 all and don't conflict with other meetings and then
8 we match that up with an available facility.

9 ROSITA WORL: How about if we look at the dates
10 between November 7 through the 10th? And if you
11 would do the homework, checking with the facility –
12 availability of facilities –

13 (Discussion off the microphone.)

14 ROSITA WORL: So would that work for you,
15 Sherry, then?

16 SHERRY HUTT: That gives us guidance.

17 ROSITA WORL: It doesn't look like it would
18 conflict with the other organizational meetings.

19 SHERRY HUTT: Okay. That gives us some
20 guidance in which to work to get something set up.
21 I much appreciate that. Thank you.

22 **DISCUSSION: COMMUNICATIONS FROM THE NATIONAL NAGPRA**
23 **PROGRAM, INCLUDING TRAINING**

24 ROSITA WORL: Okay. The other agenda item that
25 we had this morning was the discussion on

1 communication from National NAGPRA Program,
2 including training, and I think that this agenda
3 item stemmed from a presentation that Mr. Monroe
4 made to the Review Committee, and in our binder we
5 have a reference to the four recommendations that
6 arose from Mr. Monroe's statement.

7 I know that we were supposed to have formed a
8 subcommittee. I know that subcommittee attempted
9 to meet but just couldn't find dates that would
10 work for all of the committee. And at that time I
11 was going to ask National NAGPRA, because one of
12 the things that we wanted to do was to evaluate
13 constituent-driven evaluations. How do our
14 constituents view us? And I think that's what the
15 subcommittee was going to do, and I'm wondering if
16 we could ask National NAGPRA if they might make
17 some recommendation as to how we could best do
18 that.

19 SHERRY HUTT: Yes, by the way, what you have in
20 your tabs under 12 and 13, one is communications to
21 constituents, that's 12. And then 13 is
22 communication with the Review Committee, because I
23 think Mr. Monroe's comments at that meeting
24 addressed both aspects. So we wanted to speak to
25 both aspects.

1 But in terms of evaluation, you raise a very
2 good point, because what I understood you to be
3 asking, and tell me if I'm right, is that you
4 wanted some comprehensive evaluation of the
5 training that we give, feedback from the attendees,
6 compiled into a report to you from which you could
7 discern how we're doing. And the — like so many
8 things in the homework assignments, if we don't get
9 to it right away, it's not a lack of interest.
10 It's, you know, it's like the report that was given
11 to you by Sally Butts today, this was not the first
12 time you'd asked for it. You know, it's a matter
13 of getting it in among resources.

14 In my budget discussions, keep in mind the
15 Federal Government does not yet have a budget, but
16 the Park Service goes through planning in the
17 eventuality of a budget with anticipated dollars,
18 and assuming those anticipated dollars are — do
19 come through, I'll have some funds given to the
20 program through the Associate Director through the
21 Park Service, so that we can work with Lesa to get
22 some evaluation forms out to, say, all the folks
23 who took webinars, there's 400 there, and take some
24 of those other forms that we've been collecting and
25 get those into a cognizable document from which we

1 can construct a report and hopefully have it for
2 you for the next Review Committee meeting.

3 So we certainly heard you on that and I would
4 have liked to have had that done by now, but
5 everything else being as it was and attending to
6 the — I'll tell you that we fully cooperated with
7 the GAO and that took months and months of our time
8 out of our otherwise available time, but certainly
9 that's right up at the top. I would say that it is
10 at the top of the agenda at this point, and you
11 know, having the Sally Butts report and the Lauren
12 Miyamoto report to you as done for this time or at
13 least we're under control there, so that evaluation
14 report would be right at the top of the stack. So
15 that's what I understand you to be asking. Am I
16 correct in terms of the homework assignment?

17 ROSITA WORL: That's my understanding.

18 DAN MONROE: Just so I'm clear, your
19 suggestion, Sherry, was that you evaluate the
20 webinar?

21 SHERRY HUTT: Not just — it's the training, all
22 the training that we do.

23 DAN MONROE: Yes.

24 SHERRY HUTT: And that's — so for FY10, we had
25 training for 1,241 participants, a third of — about

1 a third or 40 percent of those were webinars. So
2 we have the means to get evals out to those. Now
3 from some of the ones that we did in person, we had
4 paper evaluations from those already, and so we can
5 get all of that training, if we – we had a huge
6 amount of training in FY10. If we can get all
7 those evals together, we hope we can give you a
8 comprehensive report on how we're doing.

9 DAN MONROE: So my – that would be great. My
10 remarks earlier, as referenced in the reports
11 today, also pertained to written communications
12 with tribes, museums and other agencies. And I
13 guess I'd be very interested in knowing if you have
14 any suggestions for means by which those can be
15 evaluated in some reasonable manner. I mean, one
16 option would be to simply take a random sample and
17 ask amongst the appropriate agencies and tribes
18 what – what the people who have been recent
19 recipients of communications would suggest and how
20 they would evaluate. I don't have any methodology
21 in mind, but that was a very core part of the
22 intent.

23 SHERRY HUTT: The – what you're speaking of is
24 more of a general survey, and to do that we would
25 need to design it. We would have to have it

1 approved by OMB. Federal agencies are restricted
2 in just general survey because if you can imagine
3 lots and lots of paperwork going out. We – what we
4 attempted to do for this meeting was give you – we
5 just went through and pulled random documents.
6 What you have under 12, for instance, are we – the
7 types of outreach that we have so that you could
8 look at the actual corpus of our outreach itself.
9 And of course with the subcommittee that you'd
10 appointed, we might be able to formulate a way in
11 which we could do that. But survey is something –
12 for a Federal agency is somewhat problematic.

13 DAN MONROE: If those are the requirements I
14 would suggest not doing a survey. Perhaps it would
15 work just as well to have the subcommittee do a
16 review of some span of communications to the field
17 – tribes, museums, universities, etcetera, Federal
18 agencies – and simply come back and make some
19 recommendations based on that review. That's the
20 simplest way to proceed and that would be, I think,
21 helpful.

22 SHERRY HUTT: And that would be fine. What we
23 would do is they would determine what they want.
24 We would pull those documents, give them those
25 documents, and then they would assess them. And

1 that's certainly very workable. It's a time
2 commitment on the committee or the subcommittee,
3 but it's certainly workable from our standpoint. I
4 don't -- you know, and what you have under tab 12
5 and 13 are at least some types of things that we
6 do.

7 We communicate with the public, you know, the
8 website -- we like directing people to the website
9 and putting up the Review Committee materials and
10 all. The more people come there and the more we
11 serve them, the better. We also send out note
12 cards to everybody on our mailing list when
13 critical things are coming up, such as meetings and
14 grants times, so that they get out. The -- what we
15 also put in there is some training materials, some
16 examples of PowerPoints and the kinds of notice
17 that we put out. We call them email blasts. We
18 put out these newsletters and then they go out to
19 everybody on the email mailing list, which is how --
20 I might ask Lesa how big the mailing list is in
21 terms of number --

22 LESA KOSCIELSKI: (Comment inaudible.)

23 SHERRY HUTT: -- 1,600 on the mailing list that
24 we sent out.

25 Some other things under 12 that I might point

1 you to, when the CUI rule came out, people thought
2 how complicated is this, so we worked with counsel
3 to do the CUI rule on a one page, you know, that
4 type of thing. So certainly how we communicated
5 with the public is something that we enjoy the
6 feedback because we want to be as understandable
7 and relevant as we can be.

8 DAN MONROE: Madam Chair, I would suggest the
9 committee look at that full spectrum of
10 communications, but my interest and focus were
11 principally targeted to communications between the
12 National NAGPRA Office and the parties involved in
13 disputes and clarifications of questions that they
14 had asked and so on. So there is clearly a broad
15 spectrum of things. Some of those were not really
16 the principle interest or focus, but I think they
17 should be taken into account by the subcommittee.
18 Others are much more narrow. And I believe that it
19 would be entirely satisfactory for the subcommittee
20 to take on that task and take a look at the full
21 spectrum, particularly the kind of communications I
22 just referenced and then come back with some
23 recommendations to share with the National NAGPRA
24 Program and the Review Committee.

25 ROSITA WORL: So we do have the committee with

1 Sonya, Eric and myself, and that committee was
2 charged again this morning to look at outreach, and
3 so I think that that would be – we could fold that
4 in. But I would also invite and recommend that we
5 have – we invite our interest groups to comment on
6 our communication in – you know, we received a
7 number of recommendations or two recommendations,
8 two sets of recommendations from two different
9 tribes this morning or this afternoon. So maybe we
10 might invite others, you know, when they're – when
11 tribes or museums are having their discussions is
12 to maybe ask them to consider that as well and then
13 invite public comment in that area. So if we could
14 notice that, you know, that we would be interested
15 in hearing remarks from the public in this area
16 that might also be helpful.

17 SHERRY HUTT: Like for the next Review
18 Committee meeting.

19 ROSITA WORL: Yes.

20 SHERRY HUTT: So that you can have that input,
21 so that could be part of the Federal – the Federal
22 Register notice for the next meeting has already
23 been published, but we can certainly – the one in
24 June, but we can certainly put something up on the
25 website and all to solicit that kind of agenda

1 items, public comment.

2 ROSITA WORL: Public comment or yes, if they
3 would like to comment on that, yes, that would be
4 good.

5 The other possibility is – it will work for
6 tribes but not for museums or scientific
7 organizations, is that the President has called for
8 agencies to look at their consultation process.
9 And I don't want to inflict another consultation
10 request on to tribes because I just came back from
11 NCAI where we're hearing that every little agency
12 is going out to tribes to talk about or request,
13 you know, their feelings about – you know, their
14 thoughts about consultation. But what we might do
15 is take a look at what the Department of Interior
16 has done and see if there are any recommendations
17 that arise from these meetings that are ongoing
18 meetings and see if we might – if we're doing that,
19 we're not doing that, then maybe we could do that
20 assessment.

21 SHERRY HUTT: Actually the Park Service, the
22 Department in response to the President's Order is
23 doing that sort of thing. If you would like a
24 report on that, we would arrange for that as an
25 agenda item – that would be an agenda item for the

1 next Review Committee meeting.

2 ROSITA WORL: If there are no objections, I
3 think we should do that. I'm reminded of Billie
4 Jones, I think it was Billie Jones, that kept
5 reminding the committee over and over again that it
6 was our responsibility to have true and meaningful
7 consultation. So maybe in honor of Billie, let's
8 do that.

9 I think the other recommendations that we had
10 made was that -- was that the National NAGPRA
11 Program develop a written outline for the decision-
12 making process for federally recognized tribes,
13 Native Hawaiian organizations, museums, scientific
14 organizations, and Federal agencies. And I think
15 this was also an issue that was raised in the GAO
16 report, and so I'm assuming that that would be --
17 you are responding to that.

18 SHERRY HUTT: Yeah, we also -- we have on our
19 website some materials on decision making that the
20 public accesses, and there's a lot of training
21 materials on the website that we're revising. When
22 you say decision-making process, there are a number
23 -- you know, there's the decision making on cultural
24 affiliation and CUI, there's decision making in
25 identifying for notices and all the different types

1 of notices. And we have four new templates on
2 notices, and those kind of take you through the
3 decision process. To actually – taking down some
4 of the education pieces and redoing those is
5 something that again is a priority this year and
6 requires us to consult with counsel, because now
7 we're giving legal advice, which we can do in that
8 but we don't quite have that ready to put up and
9 distribute. But that also was a homework
10 assignment from this summer that is – that we
11 understand that's a pending homework assignment.

12 ROSITA WORL: And I think the other two areas
13 from the GAO report that I recall was the
14 nominations process and then also rulemaking or how
15 – you know, rulemaking, the regulations.

16 SHERRY HUTT: Yeah, would you like me to speak
17 to that? As to the nominations process, I think
18 you all received my – I forwarded you the email
19 that Jeff Malcolm responded when I asked what did
20 we do in '05 and '06 that you referred to in the
21 GAO report, and he said we don't really have any
22 information, we have a tenuous rumor and identified
23 two Review Committee members, one who is no longer
24 sitting and one who is, and said that's what we
25 were referring to but we have no information on

1 that. And I asked why did you put that in as a
2 fact if you have no backup, and you know, his
3 response was you can take exception to that. I
4 forwarded you that email, I forwarded it to
5 counsel, and I forwarded it to my leadership, and
6 they were concerned.

7 The fact is, so that you know how Review
8 Committee members are appointed, and I can go
9 through that with you if you like so that you know,
10 when we – first of all we publish in the Federal
11 Register. We like to give 60 or 90 days. We try
12 to put in 90. I think this time when it went up to
13 the Secretary's Office they changed it to 60 – 60,
14 but there was a time, back when, when there was 30
15 days. That's insufficient to give time for
16 scientific organizations and museums and tribes to
17 respond, so we like to lengthen that time.

18 And that notice goes out, then we receive the
19 incoming. We receive the packages of incoming.
20 And the way we've been doing it, and particularly
21 since David has been the DFO, is we take those
22 packages. I call them packages. Essentially it's
23 the information on the applicant. We put that all
24 together and we give it to the policy office in the
25 National Park Service. They then take that through

1 the decision-making process in the Department. It
2 removes our program from any selection input in
3 that regard so that someone would say, oh, you just
4 wanted so-and-so or lobbying or whatever. We're
5 simply not involved in that, so that you know. I
6 mean, as I look at all of you and the way that you
7 were appointed, there's a lot of integrity to that
8 process. And so that goes up through – it goes to
9 – it goes through the Park Service and the various
10 – Will Shafroth actually gets it but it goes up to
11 the Secretary. It comes back to the Assistant
12 Secretary for the actual appointment.

13 And you should know the kinds of attention
14 that are given to your appointments. The White
15 House vets you all as appointees and weighs in with
16 the Secretary. Members of Congress weigh in and
17 have their matters vetted with the Secretary, and
18 it's at that level that the discourse occurs on
19 making appointments. You all are viewed as very
20 important. I mean, we all view you as important
21 people but so do the higher ups view you as
22 important people. And at that level, how one
23 person is appointed rather than another, you know,
24 that's – you know, I have no insight as to that,
25 except to know – except for you to know that the

1 packages we take we turn over, and they go up
2 through that vetting process. And then we are
3 informed that the Secretary has made a choice and
4 the date that that choice will become effective,
5 and then on that date we're able to contact the
6 person and work with them and get through the
7 paperwork.

8 So there is - there's an element of the
9 unknown but it's at that discretionary - that high
10 discretionary level at which it should exist. And
11 to the extent that someone is concerned that there
12 may be something else or untoward - you know, I
13 can't respond to that because I can't respond to
14 something that doesn't exist. The GAO made a
15 recommendation based on an assumption and one of
16 their recommendations was that we look at our
17 process, and so that we would increase the
18 integrity. And perhaps the aspect of increasing
19 integrity is to give information at just how that
20 process works, such as I've just outlined for you.

21 They came to our office with a list of each of
22 you and as to what might be wrong with the
23 appointment of each of you, and we gave them full
24 access to all of our documents. And at the end of
25 the day they couldn't find anything wrong with the

1 appointment of any of you, and that's the fact.
2 The conclusion – the assumption upon which the
3 conclusion is based is negatively stated in the
4 report. That's their prerogative, but the facts
5 are that the process is sound and fair, and that in
6 fact the Department of the Interior has a process
7 for appointing people to boards. This is not the
8 only one that the Secretary appoints.

9 Each administration does things a little
10 differently. We receive the – sort of the marching
11 orders or the process that will be – you know, that
12 will be in play as to the differences that might
13 occur from administration to administration, how
14 they want their paperwork arranged or how they want
15 things packaged up. But overall, it's a process
16 that really does, whether it was the last
17 administration or this administration, it's a
18 process that really is fair and impartial. And
19 then you get to the tough decision that the
20 Secretary makes as to who to choose. And on that,
21 the only insight I have is that they look at the
22 resumes of people and they look at the various
23 factors and make a decision on that level.

24 So you are – you are all deeply examined
25 before you are appointed, and if there were

1 something that – you know, something that was amiss
2 or that the GAO had pointed out something amiss, at
3 least I would have a clue as to what behavior
4 modification might be appropriate. But we didn't
5 get anything like that. So hopefully we can put
6 aside whatever negative assumptions of the Review
7 Committee are created by that report by just moving
8 forward in the same positive, open manner that we
9 hope to have employed in the past.

10 ROSITA WORL: And I think that's what we'd like
11 is just if we could put that on the website, you
12 know, the process for the nomination and selection
13 that would be helpful.

14 SHERRY HUTT: All right.

15 ROSITA WORL: Sonya.

16 SONYA ATALAY: I'd also like to ask a question
17 about the nomination process. I wonder if there's
18 anything on record or if we could discuss who are
19 the possible nominating organizations? I know that
20 it says here – I'm looking right at the Charter –
21 three members appointed from nominations submitted
22 by national museum organizations and scientific
23 organizations. And I wonder if there's a list that
24 denotes who is considered as a scientific
25 organization or a national museum association or

1 how that determination is made as to what are valid
2 organizations nominating entities.

3 SHERRY HUTT: We don't actually put up a list
4 and say these are the okay folks because that list
5 might be limiting just in its – by its very nature.
6 But when nominations come in, certainly the policy
7 office can go to Google and find out some
8 information about that organization. If it appears
9 to be a nationally chartered organization, then
10 it's good to go. If it was not, then certainly
11 that would be flagged. And you know one issue
12 that's come up that's been very sensitive, and this
13 is: Is the individual a religious leader or
14 nominated by someone that – and so you have to ask
15 that question. And there are quite frankly some
16 people who would be very fine nominees, but they
17 are offended at having to respond to that. And
18 it's unfortunate that we have to have that if
19 that's offensive but the statute requires that
20 these – that we have at least two members who are
21 religious leaders. So we have to have that
22 question in there when that notice goes out.

23 ROSITA WORL: Okay. Any further discussions on
24 our communication?

25 I think we are doing the two meetings a year.

1 We've been assured that we'll have that, and then I
2 think we are receiving quarterly updates and then
3 anything if any emergency should arise, you know,
4 those were the other – the other recommendations.
5 So I'm assuming that we're happy with that?

6 SHERRY HUTT: And if I might ask you all, you
7 all were concerned in October of '09 there was a
8 House hearing and you all wanted to testify because
9 by statute you speak to the Congress and you
10 weren't included on that hearing. And we did not
11 have notice of that such that we could – you know,
12 if we had notice, we would give you notice so that
13 you could hopefully get in there. By the time we
14 knew and told you evidently the witness list was
15 closed. If any of you have notice of that, let us
16 know as well, so that we can follow up on that. If
17 any of you are meeting with a Secretary or whatever
18 and you need us to give you some documentation, by
19 all means, let us know that so we can give you
20 whatever support materials that you might need.
21 Otherwise, we forward you the information we know
22 as we find it, as we found out about it.

23 ROSITA WORL: Thank you.

24 MERVIN WRIGHT, JR.: I just have one question.

25 ROSITA WORL: Go ahead.

1 MERVIN WRIGHT, JR.: With regard to training,
2 when we were down there in Florida last October you
3 had made a statement that tribal burials are
4 treated as archaeology while other cemeteries are
5 treated with the utmost respect and sanctity, so I
6 would like to see that a description be created and
7 provided in the training materials as to why tribal
8 burials are treated as archaeology.

9 SHERRY HUTT: When I refer to that — I didn't
10 do the training in Florida, but I have commented on
11 that in talking about NAGPRA as human rights law,
12 those — that comes from the Senate hearings on the
13 development of NAGPRA when they receive that kind
14 of testimony, that burials of tribal people were
15 given disparate treatment from those of others.
16 And that was one of the factors that led to the
17 passage of NAGPRA. Are you asking whether that's
18 still something that occurs today or —

19 MERVIN WRIGHT, JR.: Well, in the training you
20 had stated that — what I just said, that the Civil
21 War type cemeteries are treated and protected and
22 tribal burials are considered archaeology. So it
23 can be a description as to why — what makes that
24 statement valid, I think it would be helpful for
25 those that are in the training to know how the

1 National Program is advocating the requirements to
2 implement NAGPRA.

3 SHERRY HUTT: Perhaps I don't understand your
4 question, because when that's - there's usually a
5 sort of background history and the making of
6 NAGPRA, Congress received that as testimony and
7 that's what we refer to -

8 STEPHEN SIMPSON: Yeah, David and I were -
9 David and I were just talking about this because we
10 did the - he and I, I think, did the training, and
11 I think the only - if we made that statement, it
12 was only in the context that Sherry mentioned,
13 which is background for NAGPRA. We did not mean to
14 imply that tribal burial sites are currently - are
15 or should be treated as archaeology by any means.

16 MERVIN WRIGHT, JR.: Thank you.

17 DAN MONROE: Madam Chair?

18 ROSITA WORL: Dan.

19 DAN MONROE: I would just like to add
20 congratulations to the National NAGPRA Program for
21 the outstanding video that you produced that deals
22 with the history of the development of NAGPRA.
23 It's really beautifully done and I congratulate you
24 on all of your work in making it happen, a very
25 effective tool for providing context.

1 SHERRY HUTT: Thank you for that. I hope you
2 will like the other seven. You've seen the civil
3 penalty one in Seattle, and hopefully at the next
4 meeting we'll have more to show you. But the theme
5 of all the voices and all the interviews coming in,
6 that goes through all of them, different people
7 comment, and then the moderator for each might be
8 different as the topic is different, but that – it
9 meant a lot to us that so many people were willing
10 to be videotaped and to have their voices heard and
11 included because it is the voices of so many people
12 across the country that are out there doing this
13 work that should be included and up front. And
14 thank you for your thoughts.

15 ROSITA WORL: Well, if the committee concurs,
16 let's take a ten-minute break, and then we will
17 come back and discuss our report to Congress and
18 then we will open it up for public comment. So
19 ten-minute recess.

20 **BREAK**

21 ROSITA WORL: Okay. Should we call the Review
22 Committee back to order please? Are we – is our
23 Program staff ready?

24 DAVID TARLER: Yes, Madam Chair, we're ready.

25 ROSITA WORL: All right. We have two agenda

1 items left, the NAGPRA Review Committee report to
2 Congress for 2010, that report – Eric, I’ll let you
3 do the report on that.

4 **THE NAGPRA REVIEW COMMITTEE’S REPORT TO CONGRESS**
5 **FOR 2010**

6 ERIC HEMENWAY: Thank you, Madam Chair. In
7 preparing the report to Congress, I tried to
8 illustrate what goes on at these meetings and give
9 Congress a better idea of what transpires between
10 tribes and the National NAGPRA Program and museums
11 and Federal agencies and kind of illustrate that
12 progress is being made under NAGPRA but also what
13 needs to be implemented in the near future. And I
14 think a big part of the issue is going to be in, of
15 course, funding, and I requested additional funding
16 for staff at National NAGPRA in anticipation of the
17 increased number of notices from 10.11 and also for
18 additional staff to help carry out civil penalties.
19 And I think with Bob Palmer’s testimony today I
20 think that is going to be very relevant in the near
21 future to have somebody who is at the job, because
22 as of right now it doesn’t sound like anybody is
23 going to be at the job.

24 In preparing the report, there was the
25 “Journeys to Repatriation” retrospective for the

1 grants that was included and that will also
2 illustrate the success of the grants program that
3 has been going on with National NAGPRA. And the
4 funds that are appropriated to the grants are real
5 and that they had a lot of stories about different
6 grants and the outcomes of the grants, so I think
7 that was a nice addition to the report. And I
8 never wrote a report to Congress before so I took a
9 cue from other reports, and I was happy to
10 participate in that in my capacity of a Review
11 Committee member, and if there's any other
12 questions.

13 ROSITA WORL: And the report has been
14 distributed?

15 ERIC HEMENWAY: Yes.

16 SHERRY HUTT: Oh, the report was distributed
17 within days of completion. What happened was when
18 we had it complete and with the Executive Summary
19 that you wanted, we had it printed, nicely printed
20 and delivered. It actually was hand-delivered,
21 Katherine Carlton actually went from door to door
22 in the Congressional committee to deliver them and
23 the Senate committee, and it was like a day or two
24 after that when I ran into somebody who works for
25 one of the committees, and they said, oh, yes,

1 they'd all seen your report.

2 So it came in before the GAO report actually,
3 so that whenever the Senators, whenever the members
4 had the GAO report on NAGPRA they also had your
5 2009 report that Eric is referring to and the
6 "Journeys to Repatriation" with it, so they had
7 that big picture, which really highlights the
8 importance of your report and how quickly it goes
9 into the hands of the members of Congress.

10 ROSITA WORL: Great. I'd like to commend Eric
11 and who else worked with you? Was it a sole source
12 to you? Did you do it by yourself?

13 ERIC HEMENWAY: Yes.

14 ROSITA WORL: Yes. Well, I want to commend
15 Eric. I mean, if you -- if you go back a few years,
16 you'll see that we were -- the Review Committee was
17 behind I think two years at one time. So it's
18 really great that we had a Review Committee member
19 who took this responsibility and ran with it and
20 did a great job, we think.

21 And are there any other questions or comments
22 on this report, 2010 report?

23 DAVID TARLER: Madam Chair, may I just make a
24 point of clarification, and we appreciate Eric's
25 report, both the written report and the report to

1 the Review Committee and to the public that he just
2 made. His report was for 2009.

3 ROSITA WORL: Oh, I'm sorry, FY – yes, you're
4 right.

5 DAVID TARLER: And we appreciate that. We are
6 now dealing with two items on the agenda. One
7 would be the report to the Congress for 2010 and
8 then the other for 2011. As you know, the Federal
9 Government works on a year that begins on October
10 the 1st and ends on September the 30th. Historically
11 the Review Committee has written reports that would
12 cover the span of a calendar year. Oftentimes the
13 National NAGPRA Program was asked to supply two
14 sets of data, one for a fiscal year and one for a
15 calendar year. We would respectfully request that,
16 both to track the data that the National NAGPRA
17 Program provides in its program report for the
18 fiscal year and also to address the concerns of the
19 Review Committee and Congress with respect to
20 NAGPRA implementation and issues that affect
21 NAGPRA, that the Review Committee consider writing
22 its reports to cover fiscal years rather than
23 calendar years. So that the next report to the
24 Congress would cover the calendar year for 2010,
25 which began on October 1st of – excuse me, Fiscal

1 Year 2010, which began on October 1st of 2009 and
2 lasted until September 30th, 2010.

3 SHERRY HUTT: Just so you see the cadence of
4 how this might work, as we say, the fiscal year
5 ends on September 30. You all tend to meet in
6 November, and so – at least one of your two
7 meetings is in November. So if the program report
8 concludes with data from fiscal year end September
9 30 and we have that data for you at the meeting
10 like this meeting, and then you deal with the
11 report and what you want to put into it at this
12 meeting, have your subcommittee write your report,
13 we would be getting it into Congress by the end of
14 the calendar year in that year. So the Fiscal Year
15 '10 report, bearing data from Fiscal Year '10,
16 would be submitted to the Congress by December of
17 '10.

18 And so each year the – it still is an
19 annualized report submitted say December of each
20 calendar year, but whether you call it a calendar
21 year report or a fiscal year report, we close out
22 the books on numbers and then you would then have
23 that time to write your report. We would print it
24 up and get it to the Hill by the end of each year,
25 which has been the way Congress has been working,

1 you know, they're working on budgets even like now
2 for the next year, and so it would be very timely.
3 So the cadence really wouldn't change much if you
4 think about it. I don't want to confuse you all.

5 ROSITA WORL: I think this is our communication
6 problem. Sorry. And I'm being slow here, but this
7 one says FY 2010 final report, this one right here,
8 right?

9 STEPHEN SIMPSON: This -- the National NAGPRA?

10 SHERRY HUTT: The program report.

11 ROSITA WORL: Oh, okay. All right.

12 SHERRY HUTT: The program report was FY10 that
13 ended on September 30, so we compiled that data for
14 you and that typically you look at page 3 and you
15 pick up all those numbers. And what David was
16 saying is in some past years we would then go back
17 and look at how many notices were done in the
18 calendar year. So we were sending two sets of
19 numbers out upon the waters, you see, calendar year
20 numbers and fiscal year. If you operate off the
21 fiscal year data and then do your report for the
22 year off of that to get it in by the calendar year,
23 you're good. Whether you call it a fiscal year
24 report or a calendar year report, I don't -- I'm
25 sort of agnostic on that, but you would be sort of

1 writing your report every year in November based on
2 the data that we give you in October. Does that
3 make sense?

4 SONYA ATALAY: Will you – will National NAGPRA
5 still compile a fiscal year report?

6 SHERRY HUTT: Every single year, yes.

7 SONYA ATALAY: Every year, and that will come
8 out in approximately –

9 SHERRY HUTT: October.

10 SONYA ATALAY: – in October, and then we can
11 utilize that data in order to complete our annual
12 report, which will come out and go to Congress
13 approximately sometime by the end of the year in
14 December.

15 SHERRY HUTT: Correct. Correct.

16 SONYA ATALAY: Got it.

17 ROSITA WORL: Okay.

18 SHERRY HUTT: And so you were – the one that
19 went out just recently, the '09 report, obviously
20 came after '09, but you had this fortuitous event.
21 You had the GAO report and it came out at the same
22 time your report came out for '09, so they – so all
23 the members grabbed the two together and they had
24 that data with them when they looked at the GAO
25 report. Right on the heels of that you're

1 preparing this year's report, so it seems like it's
2 coming out rather quickly on the heels of it, but
3 you're establishing a cadence so that year to year
4 it would – the cycle would be pretty much the same.

5 The other thing that I would like to commend
6 you for and that is that starting with your recent
7 reports, you've changed things. And Eric, in the
8 report that he put together, and you all were very
9 sensitive to – and Sonya the year before, you're
10 very sensitive to making sure that you really
11 respond to what Congress said, which is the
12 successes and the barriers. And to get that, you
13 have people come forward in the Review Committee
14 meetings to give you that information for your
15 report. That's a – that's a huge focus shift from
16 what was done historically. That's probably of
17 great service to your constituency that you're
18 focusing on that.

19 SONYA ATALAY: With that in mind, I'd like to –
20 since I'll be the one compiling the year-end report
21 this year, should we get to that?

22 ROSITA WORL: Yes.

23 SONYA ATALAY: I have a question about that.

24 ROSITA WORL: The Chair was going to appoint
25 Sonya and Adrian.

1 SONYA ATALAY: Since I'll be appointed to do
2 that I'd like to -- I wonder if we could request
3 from National NAGPRA that they compile a list or
4 put together some of the items that we've heard in
5 this meeting and in our recent meetings people who
6 have come forward talking about their -- the
7 barriers that they've experienced. We heard
8 several communities talk about that today. Would
9 that be possible to assist with our year-end
10 report?

11 SHERRY HUTT: I'm nodding to Lesa because what
12 you'll get from Lesa will be excerpts from their
13 actual statements rather than having us filter
14 that, excerpts from actual statements would
15 probably be the best. So as Lesa goes through and
16 pulls that out, we'll make arrangements to have
17 that to you, sort of on the top of the list.

18 SONYA ATALAY: Thank you.

19 ROSITA WORL: So we are completed with our
20 report to Congress. Do we need further discussion?

21 Have we completed our job here, Sherry and
22 David? Stephen?

23 DAVID TARLER: My understanding is that you
24 have appointed a subcommittee to write the report
25 to Congress for 2010 and that the period reflected

1 in the report would be October 1st, 2009 to
2 September 30th, 2010?

3 ROSITA WORL: Yes.

4 DAVID TARLER: It is – we are now in Fiscal
5 Year 2011, and you might wish to address the Fiscal
6 Year report for 2011. If not, then I would
7 strongly suggest that the matter be addressed at
8 the next Review Committee meeting.

9 ROSITA WORL: I think since it's such a
10 confusing issue to us, let's have the time to
11 digest it and consider it at the next meeting. So
12 if that's agreeable, Mr. DFO?

13 DAVID TARLER: Thank you, Madam Chair.

14 ROSITA WORL: All right. Did we have any other
15 agenda items that we neglected in previous days
16 that we might address?

17 DAVID TARLER: No, Madam Chair. There is an
18 item that was not included in yesterday's agenda,
19 and it will be included in tomorrow's agenda.

20 ROSITA WORL: Okay. All right.

21 **DISCUSSION: GAO REPORT**

22 ROSITA WORL: Maybe – maybe we could get back
23 to the GAO report. We had discussion of that this
24 morning, and I'd like to figure out a time where we
25 could review it – I mean, there were some things in

1 there like I thought, you know, we need to be
2 certain that the Review Committee has opportunities
3 for training. I mean, we just want to say, you
4 know, that all new Review Committee members should
5 go through that maybe once or twice, maybe we
6 should have refreshers, those kinds of things I was
7 concerned about, you know, the GAO report. I think
8 we've discussed some of them but I would – you know
9 I would recommend to our Review Committee members
10 is that we take that GAO report, we review it
11 thoroughly and then be prepared to discuss, you
12 know, some action items at our next meeting, if
13 that's agreeable to the committee.

14 And I think there were some – you know, some
15 issues that we raised, like federally recognized
16 tribes. That's a very contentious issue, and I –
17 you know, I want to figure out the best way to deal
18 with it. We've had tribes – nonfederally
19 recognized tribes come and plead before us and
20 saying this is a human rights issue but yet we have
21 the legal political issue and I want to think about
22 how to best approach that. I mean, I know that we
23 have within the limits of the law, or are there
24 recommendations, you know, that we could make that
25 might address the issue.

1 SHERRY HUTT: You know, in terms of putting
2 things on the agenda or having the Review Committee
3 look at things, one of the lines of thought in the
4 GAO report was that Review Committee had lost
5 credibility in a sense because of the kinds of
6 things you considered, such as nonfederally
7 recognized groups. Section 8 of the law is very
8 broad and really Congress gave you very broad
9 opportunity to comment and advise the Secretary,
10 and the GAO report asks that you do something much
11 more narrow than that. So that – I'm concerned
12 that that's more of a legal issue should you be
13 more restricted than you have been. I'm not
14 comfortable with accepting that you should be more
15 limited, unless there was a legal analysis that
16 said you should be.

17 ROSITA WORL: I can't recall if you had that on
18 your list of action items or review items?

19 SHERRY HUTT: In the memo to the Review
20 Committee?

21 ROSITA WORL: Yes.

22 SHERRY HUTT: I think so, yes, it was.

23 ROSITA WORL: Okay. Stephen.

24 STEPHEN SIMPSON: I was going to say, Madam
25 Chair, that as Sherry points out the Review

1 Committee's authority is very broad. You are, as
2 was pointed out earlier today, you are basically
3 authorized to look at and advise the Secretary on
4 items dealing with Sections 5, 7 and 8 of the
5 statute, which is all of the repatriation process
6 from inventories and summaries all the way through
7 to the actual repatriation itself. I'm sorry, 5, 6
8 and 7; 8 is your section. And so, you know, you
9 can certainly advise the Secretary on whatever may
10 fall under those sections.

11 The - with respect to the nonfederally
12 recognized tribes and the mention in the GAO
13 report, the item in the GAO report on the ANCSA
14 corporations, I would point out to the committee
15 that the Department committed to GAO that the -
16 that the opinion from the Office of the Solicitor
17 would be done by March of next year, and we are in
18 fact on track to do that. So that - so you should
19 have that opinion done before your next meeting and
20 you're welcome to consider that then.

21 ROSITA WORL: Okay. So if there are no
22 objections, we will proceed with that way. We will
23 review the GAO report. We'll come back for
24 discussion, and then also at the same time, you
25 know, I would hope that you would give your report

1 of your review to the committee.

2 Okay. Are there any comments that – we're
3 going to open it up for public comment, but I'm
4 wondering if there are any other issues, you know,
5 that the committee would like to address.

6 **DISCUSSION: REVIEW COMMITTEE MEMBER TERM**

7 **EXPIRATIONS**

8 ROSITA WORL: This is Alan's last meeting?

9 ALAN GOODMAN: Correct.

10 SHERRY HUTT: In the Federal Register, Madam
11 Chairman, there are requests for nominations for
12 museum and science. Before the time of your next
13 meeting, both Dan Monroe and Alan Goodman's terms
14 expire. So if they are renominated and
15 reappointed, then they will be here. And if they
16 cease not to be reappointed or renominated or
17 choose to serve, then there would be somebody else
18 in your June meeting.

19 ROSITA WORL: Okay. So we have two.

20 SHERRY HUTT: So you have two slots that will
21 be resolved between now and your next meeting.

22 ROSITA WORL: Well, I think it would be
23 appropriate for the committee then to go on record
24 thanking both Alan Monroe and – Dan Monroe and Alan
25 for their service. I mean, I think both of them

1 have been – you know, made great contributions.
2 I've learned a lot from both of them, and I think
3 we really want to thank them for their service. I
4 mean, it does require a lot of work and sometimes
5 some real emotional involvement, and I think both
6 of them have served the committee, you know, well,
7 and it's been my pleasure to work with both of you.

8 DAN MONROE: Thank you.

9 ALAN GOODMAN: Thank you, Madam Chairperson.
10 You know, I just want to also add that in the last
11 four years I've developed a tremendous respect for
12 just the complexity of what we're doing. And one
13 gets frustrated with the pace of change, that it's
14 slow, but we're underfunded, understaffed, and
15 these are very complex issues that are emotional,
16 that are personal, that are cultural, that are
17 scientific, for which clear answers aren't always
18 so obvious.

19 And I think two things I'll look back to, I
20 think, in the four years, and one is passing the
21 new CUI regulations, I think have been – will prove
22 I think to be scientifically very important and I
23 think culturally are also very – was a very correct
24 move. It, I think, will be a regulation that will
25 also meet with some contestation, but I think – you

1 know, I'm proud that I was here during that moment.
2 And I'm also really proud to be on this committee
3 and the way that I think different individuals have
4 come together, have spoken their minds, have spoken
5 from their hearts, have spoken from their heads,
6 and everybody I think has listened to each other.
7 And I'll walk away feeling very, very good and very
8 enriched by that experience.

9 DAN MONROE: And I would echo his comments, and
10 with your permission I would like an opportunity to
11 make just a very brief comment about my term of
12 service at the end of tomorrow's session?

13 ROSITA WORL: Okay. Do we have any other
14 further comments or issues from the Review
15 Committee members?

16 The one issue I have, and it continues to
17 bother me is, and I've repeatedly asked about
18 museums that don't submit summaries or inventories
19 and then we find out later on that they indeed have
20 collections that should have been reported. And I
21 just keep wondering how could we -- how could we
22 track that. And it just -- if you recall, I did
23 raise the issue of one museum that we found out
24 they did have objects and after it had gone on
25 sale, on auction.

1 SHERRY HUTT: Yes, you know, we don't have
2 general audit investigative authority under the
3 statute. Now you will have, from yesterday, David,
4 you were referring to Lauren Miyamoto's report that
5 will be given tomorrow, on museums. She is the
6 intern from the Georgetown law center who has done
7 the report that you all wanted on museums and you
8 said large museums. So the first thing we did was
9 we tried to figure out what's the large museum. So
10 we looked at size of the collection, and there was
11 a neat break after 1,000. And so she - her report
12 tomorrow will give you a glimpse of how large
13 museums handle collections from the data that we do
14 know. From that, you might think of other things
15 that you want - other questions may come to mind.

16 You know, knowledge begets more questions
17 often and more research, and as we - as we sort of
18 drill down quite frankly in the National NAGPRA
19 Program looking at things, we have - of course, any
20 time we have civil penalty allegations, then those
21 have led to museums, not necessarily large
22 collection of museums, but they have led to museums
23 that didn't do inventories. The number one
24 allegation that has been found in failure to comply
25 situations is failure to do an inventory or a

1 summary, failure to do at all. And in each of
2 those investigations, and you've heard Bob and
3 David talk about this, but I think it bears
4 reiterating, and that is they come to compliance
5 over the course of the investigations. So each
6 time that happens that's another museum that
7 previously did not report that comes into
8 compliance. And that doesn't just mean giving us
9 an inventory but an inventory that's a product of
10 consultation with tribes.

11 And so our approach has been, you know, the
12 enormity of the universe of the unknown we can't
13 really deal with, and we can't really get a feel
14 on, so we're dealing with the universe of the known
15 and trying to work through that, you know,
16 incremental steps. So the idea that individuals
17 through consultation be culturally affiliated,
18 that's a big push, and then all of those
19 individuals should be in notices. That's the next
20 push. Then you look at all of the unidentifiable
21 and you ask should those be unidentifiable or
22 should they be culturally affiliated. So I mean,
23 it's an incremental building process over time.

24 And as you seem to resolve some issues you go
25 into other issues. And certainly here we are after

1 20 years and you might wish that we were further
2 along, but that issue of what's in the unknown has
3 certainly not faced us as much in the program.
4 First of all our job is to deal with the known and
5 to be responsible for the compliance documents.
6 But that has also seemed to be a huge lot to deal
7 with for the museums and Federal agencies and to
8 learn to do good consultation with tribes. Good
9 consultation, by the way, is redundant. If it's
10 consultation, it's been done well.

11 So that's kind of where we are. Over time if
12 you see things that you think we could be doing or
13 things that might be suggested in some way that we
14 can facilitate making things happen, certainly glad
15 to follow up. But I think even here at the 20-year
16 point, we're still dealing with some fundamental
17 basic issues of administration and dealing with the
18 known, to get beyond that is difficult.

19 We have museums that call us — you would be
20 heartened by this, we have museums that just call
21 us out of the blue and say, my museum hasn't done
22 NAGPRA, what do I do? Those are great kinds of
23 calls. Those are the ones where you put down
24 whatever else you're doing and you give them an
25 instant 101 on NAGPRA, and you look forward to

1 receiving their inventory and their summaries. And
2 so that still continues to happen.

3 You'll see - like in our data, you wonder why
4 things - numbers sort of jump in some ways, and
5 that's because you have a museum that heretofore
6 never reported. And that's why we in the program
7 don't report civil penalties, because we want
8 people to be able to pick up the phone and call us
9 without repercussion.

10 So some - there's a lot of what you do in
11 decisions that you make, in the kinds of public
12 outreach that are a consequence of your actions
13 that speak broadly to institutions and as a
14 consequence that's where those phone calls come
15 from and it's very hard to determine the etiology
16 of where that phone call initiated. It may have
17 been from something that they heard, from something
18 at a conference or something that you all have
19 done, but it's occurring enough to know that it
20 hasn't stopped. The spigot is not off, that these
21 calls are - and these new inroads to new museums
22 that contact us is a very heartening circumstance.

23 MERVIN WRIGHT, JR.: I'd just like to make a
24 comment to that, you know, I appreciate you sharing
25 that information, but ignorance of the law, you

1 know, sometimes is just not good enough. I think
2 that, you know, the law has been around this long
3 and certainly if a museum wants to come forward and
4 report that they have collections, you know,
5 there's ways to dealing with that, and I think
6 that's what you're saying is that, you know,
7 basically you're coming in instead of just
8 hammering down the penalty and throwing them up
9 there, you know, out there in the middle.

10 You know, I just - reflecting on the
11 symposium, you know, certainly there was some good
12 information that was shared, some good ideas to
13 move forward, and Dan, I would like to say thank
14 you for the short time that I've been acquainted to
15 you here as a committee member, and I enjoy your
16 frank candor in addressing your concerns, and the
17 questioning that you've raised - the questions
18 you've raised, you know, during our meetings and
19 also your - the time spent in helping, creating the
20 law and part of the legislative record and your
21 participation on that line. Hopefully, you'll
22 continue but I can't be a determinant factor there,
23 of course, but certainly I just wanted to
24 acknowledge that, you know, I enjoyed serving with
25 you for the time that at least we've sat here

1 together.

2 And this – my only other remark with regard to
3 the symposium, you know, certainly the timing at
4 least with the Native community, NCAI going on the
5 same week in Albuquerque prevented a lot of the
6 tribal representation, but even with the opening
7 remarks of David Hurst Thomas stating the
8 reluctance of the scientific community to
9 participate. Regardless of where we were with
10 regard to the positions that were presented with
11 the symposium, even from one extreme to the other
12 on the spectrum of representing what is necessary
13 to implement this law, it would have been
14 appropriate I feel for the scientific community to
15 come in with those positions because we did hear
16 from the tribal community at least the positions
17 that they feel very deeply about with regard to the
18 traditional knowledge being used as evidence. And
19 to see the scientific community – I mean, even to
20 the point of being candid and being just forthright
21 with what they believe. I mean, we hear it in the
22 testimonies from some of the museum representatives
23 and the scientific community. But I think with
24 regard to the symposium, you know, it was
25 unfortunate that they chose not to attend or at

1 least some of them who chose not to attend or at
2 least maybe if they didn't want to speak up. But
3 that in itself too would be a learning experience
4 for some of us to know, you know, basically, how
5 far or how close we still need to go in getting to
6 where we need to be in reaching that consensus on
7 implementation or success of NAGPRA. Thank you.

8 SONYA ATALAY: I just have a question regarding
9 the symposium. Is there – are there plans or are
10 there ways that we could – I know that was taped
11 and perhaps create DVDs upon request for – I wasn't
12 able to be there unfortunately because of my
13 teaching schedule. I just wonder if that's
14 possible.

15 SHERRY HUTT: GW had it taped. They typically
16 tape things, but then we also had someone there
17 because our person was actually able to move the
18 camera, Megan Keller, and actually focus in on
19 people. So the answer is yes, and when we get them
20 we'll figure out how we can either put up a
21 broadcast schedule on our website so that we can
22 rebroadcast them and – over time. And because
23 they're so large, it's hard for us to hold all of
24 that on the website, but if we can do broadcast
25 schedules or use the medium of our webinar to play

1 them, you know, an hour or two at a time and more
2 than once over the course of the next year so that
3 people can – there were a lot of pearls that came
4 out of those sessions, just absolute, beautiful
5 thoughts, and they do bear sharing and repeating.

6 So yes, that is – that is our intent to get
7 those up. So we have big communications plans for
8 this coming year, both the – both to get that out
9 and to get the DVDs, to get those on a broadcast
10 schedule. We don't have the funds to print up
11 thousands of the DVDs, and thousands is true when
12 you consider how many tribes and Native Hawaiian
13 organizations, right, and corporations and how many
14 museums. That's a total package of a couple
15 thousand if we were to send them all.

16 So we're hoping to do a broadcast schedule,
17 and we have partners that have expressed interest.
18 The Justice Department has been a wonderful partner
19 with us. They have a training center at the
20 National Advocacy Center in Columbia, South
21 Carolina. And they have an individual who I held
22 captive in a car as we went to a conference where
23 we were both on a panel. And she – I'm not going
24 to say what all I said in the car, but by the time
25 we got there she agreed to use her – no, she was

1 actually quite forthcoming and delighted that we
2 use the Justice Network to be able to broadcast
3 some of these, particularly in reaching tribes and
4 education that she could get out to tribes.

5 So we're – you know, cost is always a factor
6 but not if you have friends. And so we develop
7 friendships and partnerships wherever we can to get
8 these out. That is our huge priority for us in the
9 coming year. Good – thank you for noting that.

10 ROSITA WORL: Do we have any further comments
11 from the Review Committee before we open it up for
12 public comment? Just to note for the record that I
13 will be recusing myself for tomorrow as you begin
14 your deliberation. So I guess we're – Mr. DFO, did
15 we have anything else we needed to bring up at this
16 time?

17 DAVID TARLER: I believe not, Madam Chair. I
18 believe we can open the floor for public comment.

19 ROSITA WORL: All right. The floor is now open
20 for public comment. If you're interested, would
21 you please come forward, and then also maybe
22 identify yourself with Mr. Tarler first.

23 DAVID TARLER: I'd like to call first Jan
24 Bernstein, please.

25 ROSITA WORL: Who was that?

1 DAVID TARLER: Jan Bernstein.

2 ROSITA WORL: Okay, Jan, our good friend Jan.

3 **PUBLIC COMMENT**

4 **JAN BERNSTEIN**

5 JAN BERNSTEIN: Hello, good afternoon. Thank
6 you so much for opening up this time for public
7 comment. With me today is Christina Cain. She's
8 the collection manager at the University of
9 Colorado Museum, and I'm actually going to speak
10 about her museum. And this relates to what
11 Dr. Atalay said, a couple of things that you've
12 said actually. One is that a database should be
13 created to contain the findings and recommendations
14 that were made by the Review Committee that would
15 be available on the website, and I concur with that
16 recommendation. And it would be very useful to
17 people who work towards one of the goals of NAGPRA,
18 which is repatriation.

19 And when you asked for information from the
20 field during one of your telephonic meetings, I did
21 testify about the University of Colorado Museum and
22 the problems that we encountered and the successes
23 that we encountered through our testimony before
24 the Review Committee and the follow-up
25 recommendations by the Secretary. But in talking

1 to Dr. Goodman during the two-day symposium, I
2 realized that maybe everyone didn't hear that
3 testimony and so I thought it beared repeating.
4 And that is that over a year ago, the University of
5 Colorado Museum presented their request for a
6 recommendation for the disposition of 235 remains
7 with no geographic location and the Review
8 Committee unanimously recommended disposition of
9 those remains to the Ute Mountain Tribe.

10 The Secretary of Interior's letter was
11 received – oh, how long was it? – maybe over six
12 months after that we received the Secretary's
13 letter. And in that letter he approved disposition
14 of – let's see – 157 of those individuals to Ute
15 Mountain, and he said there was insufficient
16 evidence to support that 78 of them were Native
17 American. The 157 had biological evidence
18 supporting that they were Native American and the
19 78 did not have any biological evidence. All of
20 these remains were very fragmentary.

21 And so the DFO's letter, which was expressing
22 the Secretary's decision, said there were two
23 choices, and one was to present to the Review
24 Committee additional evidence, and there is no more
25 evidence that can be gleaned from these remains as

1 far as the tribes and the university are concerned.
2 And the other recommendation was – or option was to
3 follow state law. And so that is the situation
4 right now. We've informed all the tribes that we
5 consulted. Over 80 tribes were consulted about
6 these remains beginning in 2004. And the
7 disposition agreement actually requested all 235,
8 so we're going to work with the Ute Mountain Tribe
9 to figure out where to go from here with the 78
10 that the Secretary didn't approve for disposition.

11 And then the same thing happened with my other
12 client that presented on October 31, 2009. They
13 presented four individuals for disposition to the
14 Cheyenne and Arapaho Tribes of Oklahoma, and the
15 Secretary determined that two were Native American
16 and could be, as the new term is, disposed to the
17 Cheyenne and Arapaho Tribe, and two there was
18 insufficient evidence to support that they are
19 Native American. And so the museum has a meeting
20 on Monday, December 13, with the tribe in Alamosa,
21 or in Los Animas to see where to go from here with
22 the two individuals that the Secretary did not
23 approve for disposition, as well as burial plans
24 for the two that he did approve. And spring burial
25 is scheduled for University of Colorado Museum

1 human remains that have unknown geographic location
2 that the Secretary did approve. So that's the
3 situation, just wanted to let you know.

4 I should say one more thing that Dr. Goodman
5 did make a presentation at the symposium suggesting
6 that biological evidence is maybe not the best
7 evidence to indicate if an individual is culturally
8 Native American for a number of reasons, and I
9 think his research should be looked at very closely
10 and made widely available, and the Secretary should
11 definitely know about that research when making
12 these decisions. Thank you.

13 ROSITA WORL: Let me see if the committee had
14 any comments or questions of you.

15 Well, thank you very much.

16 Mr. DFO, do we have further --

17 DAVID TARLER: Yes, Madam Chair. Next, I would
18 like to call Chuck Smythe, please.

19 ROSITA WORL: I think I'll recuse myself here.

20 **CHUCK SMYTHE**

21 CHUCK SMYTHE: Good afternoon. My name is
22 Chuck Smythe. I just wanted to clarify something I
23 said at the very beginning of my statement
24 yesterday when I was talking about my employment by
25 the National Park Service, and that is that my

1 appearance here before you this week I am not
2 working for the Park Service. I am here on
3 vacation time, and my expenses are also not being
4 paid for by the Park Service. Thank you.

5 DAVID TARLER: I presume that doesn't require
6 any comment.

7 MERVIN WRIGHT, JR.: Are there any questions?
8 Okay. Thank you.

9 DAVID TARLER: Next, I would like to call Ken
10 Grant, please.

11 **KEN GRANT**

12 KEN GRANT: Thank you, Mr. Chairman, Review
13 Committee. My name is, like he says, Kenneth
14 Grant, and you heard from me yesterday. I'm the
15 spokesperson for the T'akdeintaan Clan and also a
16 member of the Snail House, and we have before you
17 our dispute on the Snail House claim.

18 Yesterday we've heard testimony from UPenn -
19 University of Pennsylvania Museum attorney, and in
20 her remarks, I just want this put down for the
21 record that she said that there was an offer to
22 resituate in their proposal after returning the 8 -
23 and she said 50 objects, I don't know what the
24 exact number is, but she offered after they
25 returned the 8 objects they would resituate - offer

1 to resituate the remaining objects in Sitka,
2 Alaska. Neither one of us have heard of that
3 proposal, and we just want that down for the record
4 that that proposal was never brought to us. So we
5 don't want our objects resituated in Sitka, Alaska,
6 if that's what it comes to.

7 And also hearing the testimony by University
8 of Pennsylvania, there was a definition of *at.óowu*
9 and they gave a very good textbook version of
10 *at.óowu*, but to us it goes far and beyond what she
11 gave to you. Yes, the word means purchased,
12 *at.óowu*, things that are purchased, and we have a
13 lot of objects and we call them *at.óowu*, we don't
14 call them objects that we wear on us that have our
15 crests. To us, it could be a very small object but
16 if it has our crest on it it's our *at.óowu* because
17 the crest was paid for down through history.

18 And I think there was some inference that some
19 of the objects were minor and to us we didn't have
20 any minor. Everything to us was - anything that
21 was *at.óowu*, if I was given, say, a rattle, someone
22 carved a rattle, it had to go through the proper
23 procedures. It had to be carved by the opposite
24 clan and given to me in a presentation, and I would
25 have to pay the individual something. It doesn't

1 have to be a huge amount. And then when it's
2 handed into my hand, it's given by the opposite
3 clan and the opposite clan always mentions a
4 spiritual person, someone that had already passed
5 on. So their spiritual event that takes place, all
6 these things make it *at.óowu*, it's not just a
7 simple act of purchasing.

8 And then another statement was made by
9 University of Pennsylvania, and I don't know,
10 people hear things differently, but when I listened
11 there seemed to be an inference that in 1924, when
12 it was supposedly sold or purchased, when the
13 objects were — there was a strong suggestion that
14 Tlingit law was nonexistent at that time, and I
15 don't think there's any proof for that. My sitting
16 here, I grew up under the shadow of my
17 grandparents, and I learned to speak the language
18 from my grandparents, and I watched them — they
19 made the hat, the Dog hat, the spiritual Dog hat.
20 They made a spiritual Fairweather hat. And I
21 watched the process and I know from my own personal
22 experience growing up in the shadow of my
23 grandparents that the law was strong, it was
24 present. So as far as any inference or suggestion
25 that in 1924 that the Tlingit law was nonexistent,

1 I believe is a fallacy, a misstatement, I think
2 it's untrue. Thank you.

3 MERVIN WRIGHT, JR.: Thank you.

4 STEPHEN SIMPSON: Mr. Chairman?

5 MERVIN WRIGHT, JR.: Yes.

6 STEPHEN SIMPSON: I just wanted to note for the
7 record that this is a public comment period and not
8 presentations on the dispute themselves.

9 MERVIN WRIGHT, JR.: Right, and I was going to
10 further suggest that because it is a public comment
11 there's really no need to interact with the persons
12 making those comments, so -

13 STEPHEN SIMPSON: That's correct.

14 MERVIN WRIGHT, JR.: So just straightforward
15 comment, and we thank them for coming forward to
16 provide that.

17 STEPHEN SIMPSON: Yes.

18 MERVIN WRIGHT, JR.: Thank you.

19 STEPHEN SIMPSON: Uh-huh.

20 MERVIN WRIGHT, JR.: Okay, Mr. DFO?

21 DAVID TARLER: Next, I would like to call Susan
22 Bruning.

23 **SUSAN BRUNING**

24 SUSAN BRUNING: Good afternoon. I'm Susan
25 Bruning, and I am affiliated with the Society for

1 American Archaeology. I'd like to commend the
2 Review Committee for the action today of moving
3 forward with a subcommittee that's going to look at
4 the disposition process. I think that's an
5 excellent suggestion that I think certainly the
6 SAA, at least, is going to welcome. And I
7 appreciated when counsel had mentioned that under
8 the FACA rules that you could actually open a
9 subcommittee to include members of the public to
10 perhaps participate actively. I know the
11 resolution that was passed made it possible to
12 submit comments via the website.

13 I'd like to just encourage you to consider
14 perhaps developing a subcommittee that invites
15 members of the scientific and museum communities,
16 as well as others, to participate over time. And I
17 think as we see when we have individuals coming
18 forward in person and addressing issues, I think it
19 enriches the understanding and the discussion, as
20 opposed to simply remotely receiving paperwork or
21 formal comments published. And I think in the
22 interests of increasingly, perhaps, developing
23 dialogue with the museum and scientific
24 communities, as Mr. Wright mentioned, I too would
25 have liked to see more scientific community

1 participation in this twentieth celebration. And
2 I'm sure there are a variety of reasons for the way
3 things ultimately unfolded, but I think perhaps
4 this could be one of those steps forward that would
5 make some organizations to feel welcome to
6 participate in a manner that is less formal than
7 just simply coming forward with presentations. So
8 I would say at least on behalf of SAA I imagine we
9 would welcome the opportunity to see that happen.
10 Thank you.

11 MERVIN WRIGHT, JR.: Thank you.

12 Mr. DFO.

13 DAVID TARLER: Next I'd like to call on Lalo
14 Franco.

15 SONYA ATALAY: I'd like to comment on that
16 first, if that's possible.

17 MERVIN WRIGHT, JR.: You can comment, yes.

18 SONYA ATALAY: So as someone who will be
19 working on that subcommittee, I would just like to
20 ask for some advice in terms of is it possible to
21 include members of scientific organizations,
22 museums, Federal agencies, and tribes who wish to
23 come forward and join us in that subcommittee work.
24 Is that a possibility?

25 STEPHEN SIMPSON: The subcommittee can

1 certainly invite participation by them, yes, and
2 you might want to do it with consultation – in
3 consultation with the DFO. And we would suggest
4 that the subcommittee, especially considering
5 dispute procedures, consult with the DFO as often
6 as possible. But yes, the subcommittee can
7 certainly invite people, you can – the Charter and
8 FACA are – the Federal Advisory Committee Act, are
9 silent on how a subcommittee can do that.
10 Generally, I think what happens is that a
11 subcommittee would actually invite particular
12 people or particular organizations to help them.

13 SONYA ATALAY: And is this something that I
14 would need to make a motion in order to request
15 that the committee agree to do this or –

16 STEPHEN SIMPSON: Only inside the subcommittee.
17 No, the subcommittee has authority to do that under
18 another charter.

19 SONYA ATALAY: Okay.

20 SHERRY HUTT: Can I get some clarification,
21 you're not –

22 STEPHEN SIMPSON: And I think the motion
23 actually allowed for that as well.

24 SHERRY HUTT: Are you saying these people would
25 be part of the subcommittee or be invited to give

1 input at their –

2 STEPHEN SIMPSON: Invited to – thank you,
3 Sherry. Invited to give input to the subcommittee.
4 Members of the subcommittee would be just the three
5 of you, but you can certainly invite input from
6 other people outside.

7 SONYA ATALAY: Well, I'd like to thank Susan
8 Bruning for coming forward with what I think is an
9 excellent suggestion. I think that a lot of the
10 ways to move forward with the NAGPRA work that all
11 of us are interested in moving forward and working
12 on does involve these kind of ways of working
13 together and that's – I think it's an excellent
14 suggestion. And I'll look forward to working with
15 other members of the subcommittee to hopefully
16 bring that to fruition. Thank you very much.

17 SUSAN BRUNING: Thank you. I'd like to make
18 just a brief correction. I made a misstatement. I
19 said disposition process and I meant dispute
20 process. Thank you.

21 DAN MONROE: Mr. Chair, I would just encourage
22 the subcommittee to make those kinds of
23 invitations, not only to SAA, but to other groups
24 that the subcommittee may wish to involve and ask
25 to provide input.

1 STEPHEN SIMPSON: And Mr. Chair, I think that's
2 absolutely correct, Mr. Monroe, you want to be as
3 inclusive as possible in that procedure.

4 DAVID TARLER: I'd like to call on Mr. Lalo
5 Franco, please.

6 **LALO FRANCO**

7 LALO FRANCO: (Native American language.) I,
8 first of all, want to thank the Review Committee
9 for your courage, all your patience. It's not an
10 easy path, you know, being on the Review Committee.
11 For a number of years, we've been witness to what
12 the Review Committee has had to go through. But I
13 have a lot of faith in the Review Committee,
14 especially all these years many of us here we've
15 been commenting here in the audience and we see a
16 good Review Committee here, well balanced,
17 balancing out Mr. Monroe there. We have a lot of
18 faith in you, and I know that the challenges that
19 are going to be coming before you are — you're
20 going to be able to address them with fairness.

21 There was a great leader that lived many, many
22 years ago, Chief Seattle, and he was quoted as
23 saying, It does not require many words to tell the
24 truth. What we're faced with now as Native people
25 especially in my part of California, central

1 California, is that we're having to say many, many
2 words over and over and over again, over and over
3 again to try to help people understand, especially
4 some of the Federal agencies in our area, what is
5 going on and what our passions are, what our
6 concerns are. And it all goes back to, you know,
7 our different interpretations of consultation. We
8 believe that much of the consultation that's been
9 done, especially in these last 15 years has not
10 been meaningful. It's been one-sided, and they got
11 control. They own the land, manifest destiny,
12 whatever. But it's been difficult, the - not
13 getting - and we're speaking the same language,
14 English. You'd think we would understand each
15 other, but it seems like we're not. It seems like
16 sometimes we're speaking two different languages.

17 So it is encouraging to hear that, you know,
18 the Review Committee has already been - made
19 recommendations to make recommendation or going to
20 make recommendations for how consultation should be
21 done, how consultation should be - how people,
22 tribes and agencies and museums could come forward
23 and have meaningful consultation. I think that's
24 going to be important that there be some - some
25 guidelines, because as I've said certainly, you

1 know, there's been difficulties in our part of the
2 country in coming to some meaningful consultation.

3 You know, it was brought to my attention a few
4 days ago that one of the -- one of our -- one of the
5 agencies that we're working with, you know, they're
6 going to come up with some new rules now for the
7 CUIs, that they're only going to repatriate under
8 these certain conditions. It's disturbing when we
9 hear these things. I haven't -- we haven't found
10 out all the details yet, but it did concern maybe
11 only tribes that were established under Executive
12 Order, you know. And it disturbs us because the
13 tribes are not involved in these decision makings
14 by these agencies, namely the Forest Service. They
15 need to come to the table with us and discuss these
16 issues and these policies and procedures, whatever
17 they're going to come up with, because what are we
18 talking about? We're talking about the remains of
19 our ancestors. So we have a right to be at that
20 table to discuss these things.

21 So again, you know, I want to urge the
22 committee to make every effort possible to help us,
23 the tribes, to get that message out there to these
24 people, that they need to have a meaningful
25 consultation with us.

1 I want to talk just a little bit about the
2 unrecognized tribes. I am a member of an
3 unrecognized tribe, one of many that are in central
4 California and throughout California. I was at one
5 time the Vice-Chairman of the Unrecognized Tribes
6 of California, and we identified 49 unrecognized
7 tribes in California. Now I'm talking about 49
8 tribal communities that still have governance,
9 still meet, have language and have ceremonies, but
10 by — as many of you probably know what happened in
11 California was none of our treaties were ever
12 honored in 1851 and 1852. And it was only through
13 Executive Order that some reservations and
14 rancherias were established in central California.
15 They left out a lot of groups which are now
16 unrecognized tribes. They left some of those
17 unrecognized tribes, especially in California, we
18 outnumber the recognized tribes that live on the
19 rancherias and reservations, we outnumber them.
20 Now, isn't it strange also too that the
21 unrecognized tribes, such as myself and my wife and
22 our children, we get contract care through Tule
23 River Reservation because we're also within their
24 service area and we get that contract care because
25 we're California Indians and we are part of the

1 judgment rolls that were established in 1928. So
2 we're Indians and we're good enough to receive
3 health care, but we're not Indians good enough to
4 receive our lands and other services. Then there
5 was a time when I went to school under a grant, but
6 then the BIA eliminated that, that you only - you
7 had to become a member now of a recognized tribes.
8 But there was one time when they gave us grants to
9 go to school.

10 The reason why I bring that up is because
11 these human remains that are in these museums in
12 California that are culturally unidentifiable, many
13 of them belong or are within the areas of the
14 unrecognized tribal groups. So what are they
15 saying to us? Are they saying that these human
16 remains that are in the museum that because they're
17 not just CUIs but they're also unrecognized
18 Indians. I don't understand. But anyway, we'll
19 figure it out one of these days, maybe.

20 Also the thing that I wanted to mention was
21 inventories and summaries. You know, to this day
22 we have not received a comprehensive inventory or
23 summary from any of the Federal agencies. Well,
24 no, I take that back. The Army Corps of Engineers
25 did give us a partial inventory. I almost fell

1 over because we thought that would be the last
2 agency to give us, you know, inventories or
3 summaries. So we're still waiting for the other
4 BLM, Forest Service, Park Service, the Bureau of
5 Reclamations, we're still waiting. Over the last,
6 you know, four or five years that we've been making
7 requests and meeting with people, there's been a
8 number of reasons. They say why, you know, they're
9 not able to accomplish their task, although they
10 know that these inventories and summaries were --
11 the deadline was in 1995, and you know, they give
12 us a number of excuses, most of them are that they
13 don't have the money or the budgets. And to us
14 that's just another excuse.

15 And then just recently one of the agencies
16 said, well, we have a partial inventory and summary
17 for you, Mr. Franco. Well, give me that, I tell
18 them, give me something, anything. How long do we
19 have to wait for these summaries or inventories?
20 We cannot intelligently make claims or even budget
21 or even do the things we need to do, get grants,
22 travel, and make plans, you know, to do
23 repatriations unless we have the numbers that we
24 need from you and where these collections are
25 located at. But the thing that disturbs me the

1 most about the inventories and the summaries is
2 that, you know, the law does say – and correct me
3 please, Mr. Counselor, over there doing something
4 else – summaries and inventories will be completed
5 in consultation with tribes. And that's what –
6 that's what's disturbing to us is we're seeing
7 inventories and summaries sent to the National
8 NAGPRA here.

9 So we've asked Sherry a few years ago, and we
10 didn't send her a letter like we said we were going
11 to, we're still debating it with our people, but
12 it's something that I hope that, you know, we will
13 – I don't know how we're to do this. Maybe we need
14 to make an official request, but I don't believe
15 that inventories and summaries should be – notices
16 of Inventory Completion should be accepted by
17 National NAGPRA unless there's some proof that
18 these museums did indeed or institutions did indeed
19 do some consultation, certified letter – certified
20 letters, phone calls, give you the names of the
21 people that they spoke to at these reservations and
22 rancherias about these inventories. But there have
23 been many Notices of Inventory Completion that were
24 submitted back in 2005 and when we looked at them,
25 we didn't consult with these people. They

1 published them. Of course, you know, we went and
2 we made a claim and we went and got the remains.
3 It was 167 remains. But there are still over 2,000
4 remains at one particular institution, 2,000 that
5 we still need to get back. And they say they've
6 done consultation with us but it's - that's not the
7 case.

8 Also in California, you know, we're
9 establishing a coalition, many coalitions.
10 Recently we were invited to a meeting with the
11 Great Basin Coalition. I'm very happy to hear
12 that. I've been wanting to attend one of their
13 meetings so we could join with our brothers and
14 sisters in Nevada and throughout the Great Basin
15 because they have some of the same issues that we
16 do. We have been going to meetings in northern
17 California with the Northeastern Sierra Nevada
18 NAGPRA Coalition. Another coalition has just
19 recently been developed. We haven't had too many
20 meetings, but they are called the Sierra Nevada
21 NAGPRA Coalition with 13 members, tribes. Now in
22 all of these coalitions we include members of the
23 unrecognized tribes. They're our relatives.
24 They're our brothers and sisters. And they are
25 also culturally affiliated, no matter what the

1 museums say, they are culturally affiliated to
2 these remains and they should have a right to be
3 able to come to the table, and so we invite them to
4 our table so we can discuss these things because
5 they're our relatives. It's not their fault that
6 they – that this happened to their ancestors long
7 ago that's caused them to be unrecognized tribes
8 now.

9 So I wanted to finish with that and again, I
10 just wanted to thank the Review Committee for your
11 patience. I want to thank Dave and Sherry and all
12 the people, the counselors, for all their hard work
13 and please, you know, continue what you're doing.
14 I know everything is going to be good. I know our
15 path in life is never a smooth one. We always come
16 across little bumps and once in a while a little
17 thorn patch we got to come across. But the path is
18 still ahead of us. Thank you. Any questions?

19 MERVIN WRIGHT, JR.: Any questions? You had a
20 question? Okay. Thank you.

21 Mr. DFO?

22 DAVID TARLER: Mr. Chair, I'd like to call Cyd
23 Martin.

24 **CYD MARTIN**

25 CYD MARTIN: Hi. I'm Cyd Martin. I'm Manager

1 of the Park NAGPRA for the National Park Service.
2 And I just have a brief note that I wanted to call
3 to everyone's attention. And that is I would
4 really like to commend the regional coordinators in
5 the National Park Service who worked with the
6 NAGPRA process during this past year with the oil
7 spill. We were actually meeting in Denver, doing
8 out yearly review of project proposals, and it
9 became – we became aware right actually at that
10 time that it was necessary. They needed protocols
11 to use in the oil spill mitigation in case they ran
12 across inadvertent discoveries during that process.
13 And my colleagues really pretty much wrapped up the
14 project proposal work that we had in record time in
15 order that we would have time to develop protocols
16 to provide to the incident command team on the oil
17 spill. And I would especially like to commend
18 Margo Schwadorn, who was here but she had to leave,
19 for her outstanding work through the whole process.
20 She's in the Southeast Region of the Park Service
21 and she has really done fabulous work. And so I
22 just wanted to point that out and get it on the
23 record because I think it's really great. We have
24 some great folks.

25 Then just a couple of other points. On the

1 subcommittee working on the dispute process, I'd
2 just like to say as a Federal agency manager that I
3 too would be very happy if agencies and museums and
4 scientific groups were included in that, you know,
5 we would be happy to participate.

6 And the other thing lastly is I'd just like to
7 thank Alan and Dan for your service on behalf of
8 the parks in the National Park Service that have
9 come before the Review Committee during the past
10 few years with culturally unidentifiable issues and
11 other issues. We really appreciate your help.
12 Thank you.

13 MERVIN WRIGHT, JR.: Thank you.

14 Mr. DFO, is there anybody else?

15 DAVID TARLER: I have no one on my list right
16 now. We can open it up to the floor.

17 MERVIN WRIGHT, JR.: Is there anybody here in
18 the auditorium who wishes to offer public comment
19 at this time?

20 **COMMENT: MERVIN WRIGHT, JR.**

21 MERVIN WRIGHT, JR.: Seeing none, I'd just like
22 to make one comment with regard to consultation.
23 The tribal consultation team is supposed to be
24 meeting today in Albuquerque in conjunction with
25 the National Congress of American Indians

1 convention there. I went upstairs to see if Pilar
2 Thomas might have hung back, but that's probably
3 where she is.

4 I've been a part of the process of developing
5 the consultation policy that's going to be the
6 overall Department of Interior's consultation
7 policy. And in some of those early meetings we
8 talked about what meaningful consultation is. I
9 know that just as it was stated earlier there's
10 differences of how consultation may be considered.
11 I just shared one story that I try to practice in
12 Nevada is if an agency wishes to consult with the
13 Pyramid Lake Paiute Tribe then it is expected that
14 they bring a decision maker to the table that can
15 make a decision on behalf of their agency or at
16 least on behalf of the project or action that they
17 are wishing to take, because a lot of times I can
18 get the authority from my tribal council to make a
19 decision, take a position with regard to a project,
20 but if the agency cannot send a representative with
21 the authority to make a decision on behalf of their
22 agency then it really cannot be considered
23 meaningful consultation.

24 That is somewhat of a tall order, but when it
25 comes to government-to-government relationships,

1 this is what is expected, I think, in a lot of
2 times, and I think especially with the treaty
3 tribes that when they were commenting on this
4 consultation policy their level of expectations are
5 higher because of the treaty language and the
6 responsibilities that those tribes have and then
7 what they were basically authorized by those
8 treaties in conducting those relations with the
9 United States. And so I just wanted to make that
10 comment that the team is in Albuquerque today and I
11 believe they're wrapping up the policy itself, and
12 that we should anticipate a release of at least a
13 draft I think, if I'm correct and I stand corrected
14 if I am mistaken, but at least in the next couple
15 of months they are planning on releasing the draft
16 consultation policy for the Department of Interior.

17 Is there anything else – go ahead, Sonya.

18 **COMMENT: SONYA ATALAY**

19 SONYA ATALAY: I would just like to follow up
20 on your comments and also on the comments that we
21 just heard from Lalo Franco just a brief while ago,
22 and this is an issue that has come up among the
23 committee members before, and that's the issue of
24 us producing some sort of policy or guidelines for
25 what is meant by consultation. I would just like

1 to ask counsel if it is within the purview and
2 charge of our committee to develop such a policy or
3 some sort of guidelines on what is meaningful
4 consultation. If we could perhaps charge a
5 subcommittee with doing that, what is - what are we
6 able to do along those lines?

7 STEPHEN SIMPSON: It is certainly - you have
8 dueling lawyers. It is certainly within the
9 purview, as I said earlier, the charge given by
10 Congress to this committee to advise the Secretary
11 is fairly broad, and certainly within sections 5, 6
12 and 7 - I got it right on the first try this time -
13 of the statute, there are ample provisions for
14 consultation and so that is certainly something the
15 committee could do.

16 The recommendations - the tribal resolution
17 that was presented to you earlier today from USET
18 and the Oklahoma tribes also discusses a policy for
19 consultation. And the Chair asked the program to
20 look at that. As has been mentioned to you before,
21 we are also looking at - the program and the
22 Solicitor's Office are beginning to look at sort of
23 the totality of the regulations. We may be able to
24 develop something in the course of that. And as -
25 and as Mr. Chair, Chairman Wright, pointed out the

1 Department is currently going through the
2 consultation – the process of developing its
3 consultation policy. I am not as familiar with the
4 schedule for that as you are, but I do know that is
5 happening and that can and may help with that sort
6 of situation as well.

7 **REVIEW COMMITTEE MOTION**

8 SONYA ATALAY: Thanks for that. So with that
9 information, I guess I would like to put forward a
10 motion that we create a subcommittee that at least
11 follow up on these issues, perhaps not too
12 immediately create the policy or guidelines, but to
13 just gather information of this sort, following up
14 on what National NAGPRA is going to put together
15 and these other lines of information and perhaps
16 from that eventually develop policy guidelines
17 along what is meaningful consultation.

18 MERVIN WRIGHT, JR.: I'm being a little bit
19 hesitant here – I think I would just suggest that
20 upon the release of the Department of Interior's
21 consultation policy, I think that would probably be
22 more suitable for our purpose here to possibly
23 build onto that or within that something a little
24 bit more detailed.

25 DAVID TARLER: Mr. Chair, I would just remind

1 the committee that this morning you had discussed
2 an agenda item for the next Review Committee
3 meeting on what the Department is doing to respond
4 to the President's order.

5 MERVIN WRIGHT, JR.: Is there anything else
6 that the committee would like to address at this
7 time?

8 I know yesterday we had on the agenda at the
9 conclusion of our meeting yesterday a traditional
10 closing, and I think we were so desperate to leave
11 or you know, to conclude and be on our way that we
12 overlooked that. However, today we haven't. Today
13 I would like to ask Eric, since he opened us up
14 this morning, that if he would be kind enough to
15 offer us a closing for today's session.

16 **TRADITIONAL CLOSING**

17 ERIC HEMENWAY: (Native American language.) I
18 thank you for everybody for coming here today and
19 working towards resolving these difficult issues
20 that involve many various aspects of many different
21 people. And I ask that (Native American language),
22 all of us ask the Good Spirits to guide us into a
23 good direction that is quick and painless as
24 possible and that we all (inaudible).

25 MERVIN WRIGHT, JR.: So thank you, and at this

1 time today's committee meeting is adjourned.

2 **MEETING ADJOURNED**

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